

THE LIBRARY OF THE
UNIVERSITY OF
NORTH CAROLINA



THE COLLECTION OF
NORTH CAROLINIANA


C340
N87a
v.42
no.1-2
1972

UNIVERSITY OF N.C. AT CHAPEL HILL



00033947203

FOR USE ONLY IN
THE NORTH CAROLINA COLLECTION



Digitized by the Internet Archive
in 2011 with funding from
Ensuring Democracy through Digital Access (NC-LSTA)





NORTH CAROLINA
ATTORNEY GENERAL REPORTS

VOLUME 42
NUMBER 1

ROBERT MORGAN
ATTORNEY GENERAL

NORTH CAROLINA
ATTORNEY GENERAL
REPORTS

Opinions of the Attorney General
July 1, 1972, through December 31, 1972

MAILING ADDRESS:
P. O. Box 629, Raleigh, N. C. 27602

ROBERT MORGAN
Attorney General

Harry W. McGalliard
Chief Deputy Attorney General

Ralph Moody
Special Counsel

Jean A. Benoy
James F. Bullock

Andrew A. Vanore, Jr.
Robert Bruce White, Jr.

Deputy Attorneys General

Carroll Leggett
Special Assistant Attorney General

H. H. Weaver
Administrative Deputy Attorney General

Myron C. Banks
James L. Blackburn
William F. Briley
Lester Chalmers
H. Al Cole, Jr.
Richard B. Conely
T. Buie Costen
Christine Y. Denson
Raymond W. Dew, Jr.
Sidney S. Eagles, Jr.
Edward L. Eatman, Jr.
Roy Andre Giles, Jr.
Eugene Hafer
Guy A. Hamlin
Claude Harris
Charles M. Hensey
Parks H. Icenhour
Dale P. Johnson
Rafford E. Jones

Thomas E. Kane
I. Beverly Lake, Jr.
Richard N. League
Charles A. Lloyd
James E. Magner, Jr.
William W. Melvin
William F. O'Connell
William B. Ray
Millard R. Rich, Jr.
James B. Richmond
Walter E. Ricks, III
Henry Thomas Rosser
Jacob L. Safron
Alfred N. Salley
Howard P. Satisfy
Eugene A. Smith
Robert S. Weathers
Robert G. Webb
Thomas B. Wood

Assistant Attorneys General

Wade E. Brown, Consultant
Herbert Lamson, Jr., Claims Attorney
Russell G. Walker, Jr., Revisor of Statutes

Ruth G. Bell
George W. Boylan
Jones P. Byrd
Don A. Davis
Ralf Haskell
Charles D. Heidgert
Howard A. Kramer

Edwin Thomas Maddox, Jr.
Henry E. Poole
M. Ann Reed
Russell G. Sherrill, III
John M. Silverstein
Edwin M. Speas, Jr.

Associate Attorneys

C 340
N 87a
v. 42
no. 1-2
1972/73

TABLE OF CONTENTS

Administration of Estates; Commissions; Executor; Joint Tenancy with Right of Survivorship; Joint Bank Accounts	138
Clean Water Bond Act of 1971 (Chapter 909, 1971 Session Laws); Application for Grants; Construction Begun Before Adoption of Administrative Rules and Regulations	16
Counties; Commissioners; Compensation; Fixing Compensation of County Commissioners Pursuant to G.S. 153-13	132
Counties; Recreation Districts; Article 28, Chapter 153 (G.S. 153-368, <i>et seq.</i>)	74
Courts; Clerk of Superior Court; Partition of Real Property; Authority to Impose Restrictive Covenants in Deeds in Sale for Partition of Real Property; G.S. 46-30	1
Courts; District Courts; Juveniles; Criminal Offenses; Commitments to the Board of Youth Development When the Juvenile is Over 16 Years of Age	69
Courts; Juveniles; Probation; Education; Compulsory Attendance Law	133
Courts; Summons and Process; Nonresidents, Service of	110
Criminal Law and Procedure; Law Enforcement; Legality of Law Enforcement Officers From Out of Jurisdiction Serving as Undercover Agents in Another Jurisdiction	76
Criminal Law and Procedure; Sentences; Judgment and Commitment; Correction, Department of; Prisons and Prisoners	68
Criminal Law and Procedure; Sentencing; Presentence Report; Use of Prior Convictions; Probation and Probation Officers	92
Criminal Law and Procedure; Youthful Offender; Parole on Conditional Release	83
Education; Colleges and Universities; Annuity or Retirement Income Contracts	

for Faculty Members, Officers and Employees of State-Supported Institutions of Higher Learning; G.S. 116-46.2	6
Education; Teachers; Teacher Tenure Act; G.S. 115-142; Career Teachers	61
Elections; Registration-Commissioners; Time of Appointment	79
Escheats; Hospitals; Applicability of Escheats Law to Hospital	14
Escheats; Marketing Cooperatives; Applicability of G.S. 116A-7	12
Escheats; Statutes of Limitations Inapplicable	49
Health; Certificate of Need; Inapplicability to Facility Already Constructed but Not Fully Licensed or Used	54
Health; Certificate of Need; Proper Licensing Agency for Facility Which Combines Hospitals, Nursing Homes and Rest Home Care	57
Insurance; Automobile Liability Insurance Policies; Termination by Rescission; Legality of	29
Insurance; Automobile Liability Insurance Policies; Terminations by Cancellation and Refusal to Renew; Applicability of 48-Month Exclusion	22
Intoxicating Liquors; Beer; Sunday Sales; County Regulation of; Straw Vote	26
Intoxicating Liquors; Beer and Wine; Sale of Sweet Wine in City of Monroe; Chapter 541, Session Laws of 1963; Enactment of Chapter 18A of the General Statutes	4
Intoxicating Liquors; Solicitation of Sales; Authority of State Board to Regulate Solicitation of Sales of Alcoholic Beverages, Beer and Wine	51
Intoxicating Liquors; Transportation; Alcoholic Beverages Being Transported to ABC Stores; Authority of Local Board to Transport Beverages	114
Jails; Sheriffs; Duty of Sheriff to Transfer Prisoners to Adjoining County	127

Licenses and Licensing; Day Care Facilities; Facility With Morning Kindergarten and a Lesser Number of Children for All Day Care	81
Licenses and Licensing; Day Care; Facilities on Federal Reservations	128
Licenses and Licensing; Day-Care Facilities; Number of Children for Whom Facility Licensed	55
Licenses and Licensing; General Contractors; Installation of Industrial Equipment	45
Licenses and Licensing; Plumbing and Heating Contractors; Necessity of Obtaining a License Under the Grandfather Clause Prior to Engaging in the Business of Plumbing and Heating Contracting	20
Mental Health; Detention of Inebriates and Mentally Ill Persons; Authority of Clerk of Superior Court to Issue Custody Order to Sheriff	43
Mental Health; Detention of Inebriates and Mentally Ill Persons; Authority of Clerk to Order Non-State Operated Hospitals to Involuntarily Accept Patients	66
Mental Health; Examination and Hospitalization of Inebriates; Public Drunkenness As a Criminal Offense	41
Motor Vehicles; Abandoned or Junked Vehicles; Removal of Abandoned Vehicles from Private Property	47
Motor Vehicles; Drivers' Licenses; Habitual Offenders	130
Motor Vehicles; Drivers' Licenses; Limited Driving Privilege; Driving After License Revoked; Sufficiency of Warrant	97
Motor Vehicles; Drivers' Licenses; Limited Driving Privilege; Revocation; Driving Under the Influence, Second Offense	125
Motor Vehicles; Drivers' Licenses; Reduction of Points for Successful Completion of Driver Improvement Clinic; G.S. 20-16(c)	84
Motor Vehicles; Drunken Driving; Plea	

Bargaining; Careless and Reckless Driving	71
Motor Vehicles; Drunken Driving; "Public Vehicular Area"	107
Municipalities; Day-Care Centers; No Authority to Expend Municipal Funds	135
Municipalities; Intoxicating Liquors; Authority to Regulate Consumption and Display on Public or City-Owned Property	59
Municipalities; Ordinances; Parking Meters; City of Raleigh	141
Municipalities; Streets and Highways; Powell Bill Funds; Expenditure for Sidewalks	91
Municipalities; Streets and Highways; Powell Bill Funds; Expenditure on State Highway System Streets	85
Oaths; Attorneys at Law; Who May Swear in Attorneys to Practice Law; G.S. 84-1, G.S. 11-7.1	82
Public Contracts; Bidding; Factory-Installed Electrical Heating and Plumbing Facilities; Separate Bids Required; G.S. 143-128	129
Public Officers and Employees; ABC Board Employees; Not Employees of the Municipality or County	28
Public Officers and Employees; Conflict of Interest; Officer Contracting for His Own Benefit; G.S. 159A-10; G.S. 14-234; County Commissioner Who is Officer of Corporation	9
Public Officers and Employees; Double Office Holding; Member of County Social Services Board and County School Board	116
Public Officers and Employees; Highway Patrol; Liability of Troopers for Medical Services Rendered to Patients	2
Public Officers and Employees; Private Use by Physicians of State Facilities	58
Public Officers and Employees; Workmen's Compensation; State Highway Patrol	136
Social Services; Foster Home Fund; Noneligibility of Persons Who are 18 or More Years of Age	8

Social Services; Juveniles; Medical Care; Sufficiency of Consent by County Department of Social Services	101
Social Services; Juveniles; Probation; Termination Under Interstate Compact on Juveniles	117
Social Services; Juveniles; Wards of the State; Effect of Placement of Custody by Judge of Juvenile Court	88
State Departments, Institutions and Agencies; Correction, Department of; Liability for Hospitalization of Inmates	38
State Departments, Institutions and Agencies; Eminent Domain; Relocation Assistance	104
State Departments, Institutions and Agencies; Orthopedic Hospital; Authority to Make Charges for Treatment, Care and Maintenance	111
State Departments, Institutions and Agencies; Publications; Free Distribution on Request to Statutory List of Institutions; G.S. 147-50	94
State Departments, Institutions and Agencies; Tort Liability; Mental Health; Area Mental Health Boards; Board Members; Authority to Sue and be Sued	120
State Departments, Institutions and Agencies; UNC at Chapel Hill; Public Utilities; Governor's Commission to Study Sale or Retention of University-Owned Utilities; Chapter 723, Session Laws of 1971	122
Taxation; Ad Valorem; Exemptions; Real Property; Homes for the Aged, Sick and Infirm; G.S. 105-278(5)	99
Taxation; Gift Tax; Decedent's Estate; Assets Includable; G.S. 105-108; G.S. 105-109	32
Taxation; Privilege License Tax; Selling Illuminating Oil or Greases or Benzine, Naphtha, Gasoline or Like Products; Automotive Service Stations; G.S. 105-72 and -89	18
Taxation; Sales Tax; Laundries and Dry Cleaners; Rug Cleaning Services; G.S. 105-164.4(4)	35

3 July 1972

Subject: Courts; Clerk of Superior Court; Partition of Real Property; Authority to Impose Restrictive Covenants in Deeds in Sale for Partition of Real Property; G. S. 46-30

Requested by: Honorable M. L. Huggins
Clerk of Superior Court
Lincoln County

Question: In a special proceeding before the clerk of superior court to sell land for partition among tenants-in-common, may the clerk authorize commissioners to impose legally binding restrictive covenants upon the real estate where the real estate now has no restrictions on its use and some of the co-tenants do not consent to the imposition of restrictive covenants?

Conclusion: In a special proceeding before the clerk of superior court to sell land for partition among tenants-in-common, the clerk may not authorize commissioners to impose legally binding restrictive covenants upon the real estate where the real estate now has no restrictions on its use and some of the co-tenants do not consent to the imposition of restrictive covenants.

Your letter of June 21, 1972 recites that you have entered an order of sale and have appointed commissioners to carry out the sale of land in a special proceeding to sell land for partition among tenants-in-common. The land now has no restrictions on it of any kind. It may be, you note, that the imposition of covenants limiting the land to residential purposes and further restricting the kind and size of residences "would be wise and in the best interests of the sale." The tenants are unable to agree on the question of voluntary imposition of restrictions.

After careful review, we conclude that the clerk of superior court does not have the authority to impose or approve imposition of restrictive covenants relating to residential use and size and kind of residences where the land was previously unencumbered.

No express statutory authority exists to restrict or modify the title taken by purchasers at such a sale. We construe G. S. 46-30 as requiring the person making the deed to convey *only* ". . . such title and estate in the property as the tenants in common. . . had therein." To impose or authorize imposition of restrictive covenants on land heretofore unrestricted, notwithstanding the wisdom of the restrictions, constitutes a modification of the tenants' title and estate in the property to be sold. For the clerk or commissioners to do so would contravene G. S. 46-30.

Supporting this position is the language by Justice Brown in *Jordan v. Faulkner*, 168 N. C. 466, 467 (1915): "The deed of the commissioner, by virtue of the partition proceedings, is in law the conveyance of all the parties, and vests in the grantee *the same title and rights* as would other conveyance equally comprehensive in terms." (*Emphasis added.*)

Robert Morgan, Attorney General
Sidney S. Eagles, Jr.,
Assistant Attorney General

- - -

5 July 1972

Subject: Public Officers and Employees; Highway Patrol; Liability of Troopers for Medical Services Rendered to Patients

Requested by: Col. Edwin C. Guy
State Highway Patrol

Question: Is a member of the State Highway Patrol personally liable for hospital and doctor charges for necessary medical services

rendered to a prisoner in his custody because he secured the medical services for the prisoner?

Conclusion:

A member of the State Highway Patrol is not personally liable for hospital and doctor charges for necessary medical services rendered to a prisoner in his custody notwithstanding the fact that he secured the medical services for the prisoner.

The typical incident described in this inquiry involved two prisoners who had been injured while resisting a lawful arrest by members of the State Highway Patrol. After making the arrest, the troopers then took the prisoners to a local hospital where they received first aid. One of these troopers was requested to sign the admittance slips on the prisoners; later, upon refusal of the prisoners to pay the medical fees incurred, the hospital requested payment from the arresting troopers.

Ordinarily an express or implied contract is necessary to render one person liable for hospitalization charges of another. Any such contract must be construed in view of the language used in the agreement as well as in light of all the facts and circumstances involved at the time it was executed. See *Bartron Clinic v. Kallemeyn*, 60 S. D. 598, 245 N. W. 393 (1932).

In the situation as described, by virtue of the troopers' position as law enforcement officers and their custodial responsibility for the prisoners, other factors enter into the circumstantial background to be considered in assaying the presence of pecuniary liability. One factor is the existence, or nonexistence, of any statutory duty to furnish necessary care for prisoners. Another factor is the basic responsibility of any peace officer, absent a specific statutory obligation, to provide humane treatment calculated to protect the health and welfare of persons within his charge.

Applying these precepts to the situation described, it is clear that the troopers' purely humanitarian act of seeking medical treatment for their prisoners was one taken in an official capacity rather than

one designed to achieve a personal end. As a result, no personal liability would appear to be incurred thereby.

As to payment of the medical costs, in the event of failure of payment by the patients and subsequent demand by the hospital, G. S. 153-53.2 and G. S. 153-53.3 appear to become pertinent as of the time of arrest. These two sections pertain to all prisoners "confined or detained" (See G. S. 153-50(6)). Basically they require that local confinement facilities have suitable plans in existence for providing emergency medical services and for payment for those services.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

7 July 1972

Subject: Intoxicating Liquors; Beer and Wine; Sale of Sweet Wine in City of Monroe; Chapter 541, Session Laws of 1963; Enactment of Chapter 18A of the General Statutes

Requested by: Mr. Koy E. Dawkins
Attorney
Monroe ABC Board

Question: In an earlier Attorney General opinion (41 N.C.A.G. 100 (1970)), this Office concluded that sweet wine could not be sold in the City of Monroe. Does the recodification of the intoxicating liquor laws as Chapter 18A of the General Statutes and the repeal of Chapter 18 affect the outcome of that issue?

Conclusion: No.

This Office held in an opinion to Mr. John R. Milliken, Monroe City Attorney, on October 8, 1970 (41 N.C.A.G. 100) that sweet wine could not be sold in the City of Monroe as provided in G. S. 18-99 since Chapter 541 of the 1963 Session Laws provides that the Monroe ABC Board and the operation of the ABC stores in Monroe will be subject to the provisions of Article 3 of Chapter 18. Although the sale of fortified wine is allowed by the provisions of former Article 3, Chapter 18, the sale of sweet wine was dealt with in G. S. 18-99, which was in Article 5 of Chapter 18.

Effective October 1, 1971, the General Assembly recodified the intoxicating liquor laws into Chapter 18A of the General Statutes and repealed Chapter 18. The category of sweet wines was abolished and, under the new General Statutes, wine is classified as either unfortified or fortified with the dividing line being a 14% alcohol by volume measure.

G. S. 18A-57 provides:

"§ 18A-57. *Local acts and local option.* – (a) Nothing in this Chapter shall operate to repeal any of the local acts of the General Assembly of North Carolina prohibiting the possession or consumption of intoxicating liquor within any county, municipality, or portion thereof, and all such local acts shall continue in full force and effect and in concurrence herewith, until repealed or modified.

"(b) Nothing in this Chapter shall require a permit to be issued for any territory where the sale of malt beverages or wine (fortified or unfortified) is prohibited by special legislative act or for any area where the sale or possession for the purpose of sale of malt beverages or wine (fortified or unfortified) is unlawful as a result of a local option election; and this Chapter shall not repeal any special, public-local, or private act prohibiting or regulating the sale of these beverages in any county in this State, or any act authorizing the board of commissioners of any county of this State, or the governing body of any municipality, in its discretion, to prohibit the sale of

malt beverages or wine (fortified or unfortified)."

Since the local act pursuant to which the ABC store election in the City of Monroe was held did not permit the sale of sweet wines but only permitted the sale of fortified wines, the enactment of Chapter 18A of the General Statutes does not affect our opinion that the category of sweet wines as they were defined in former G. S. 18-99 still may not be sold by the Monroe ABC Stores.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

10 July 1972

Subject: Education; Colleges and Universities;
Annuity or Retirement Income Contracts
for Faculty Members, Officers and
Employees of State-Supported Institutions
of Higher Learning; G. S. 116-46.2

Requested by: Mr. H. L. Ferguson, Jr.
Vice Chancellor for Business Affairs
University of North Carolina at Greensboro

Question: G. S. 116-46.2 empowers the board of
trustees of any State-supported institution
of higher learning to authorize the financial
officer to enter into annual contracts with
employees of the institution for a
reduction in salary below the total
established salary schedule for the purchase
of annuity or retirement income contracts
for the benefit of the employee.

Is an employee free to determine the
identity of the seller of such an annuity
or retirement contract entered into for the

employee's benefit, or may the institution make this determination?

Conclusion:

G. S. 116-46.2 provides that pursuant to the contract with the employee, "the financial officer or agent shall use the funds derived from the reduction in the salary . . . to purchase a non-forfeitable annuity or retirement income contract for the benefit of . . . (the employee)." Because the seller of the annuity or retirement income contract enters into an agreement with the institution, not with the employee, the institution is free to determine the identity of the seller of such contract.

G. S. 116-46.2 sets forth the procedure whereby State-supported institutions of higher learning may purchase annuity or retirement income contracts for employees of the institution. This statute establishes two types of contractual relations: (1) A contract between the employee and the appropriate administrative body of the institution whereby the employee agrees to have his pay reduced by a certain amount and the institution agrees to use this money to purchase a non-forfeitable annuity or retirement income contract; and (2) a contract between the institution and the seller of the annuity or retirement income plan under which the employee is a third party beneficiary.

Because the contract entered into between the institution and the seller is fully enforceable by the third party beneficiary, and because the contract may not be materially altered without the beneficiary's consent, the employee-beneficiary is not being deprived of the unrestrained use of a part of his salary without his consent should the institution determine who the seller of the contract will be. *Trust Company v. Processing Company*, 242 N. C. 370 (1955); 2 Strong, *N. C. Index 2d*, Contracts, §14. However, the institution should, before agreeing with the employee for reduction in pay for the purchase of an annuity or retirement income contract, advise the employee of those companies it normally does business with and, if feasible, allow the employee to choose which company he

prefers the institution to contract with for his benefit.

This opinion overrules an unpublished, informal opinion issued by this Office to Mr. Jule McMichael on 20 September 1971 construing G. S. 115-153.1, which provides for the same type of annuity and retirement income contracts for public school employees.

Robert Morgan, Attorney General
Andrew A. Vanore, Jr.,
Deputy Attorney General

- - -

11 July 1972

Subject: Social Services; Foster Home Fund;
Noneligibility of Persons Who Are 18 or
More Years of Age

Requested by: Mr. Clifton Craig
Commissioner
Department of Social Services

Question: May assistance from the State Foster Home
Fund described in G. S. 108-66 lawfully
be granted to persons who are 18 or more
years of age and who live in foster homes?

Conclusion: Assistance from the State Foster Home
Fund described in G. S. 108-66 may not
lawfully be granted to persons who are 18
or more years of age and who live in foster
homes.

G. S. 108-66 makes it clear that the funds provided for therein are for "needy children". G. S. 48A-2 provides that "A minor is any person who has not reached the age of 18 years." Therefore, we do not perceive that persons who are 18 or more years of age can properly be denominated "children". Furthermore, although G. S. 108-66 speaks of "needy children" rather than "dependent

children", it is deemed significant that G. S. 108-66 providing for the Foster Home Fund is a part of Article 2 of Chapter 108 wherein, in G. S. 108-24, the adult status of persons who are 18 or more years of age is recognized. G. S. 108-24 is, in pertinent part, as follows:

"As used in Article 2: . . . (3) 'Dependent child' is a person under 18 years of age. . . ."

Robert Morgan, Attorney General
Robert S. Weathers,
Assistant Attorney General

- - -

12 July 1972

Subject: Public Officers and Employees; Conflict of Interest; Officer Contracting for His Own Benefit; G. S. 159A-10; G. S. 14-234; County Commissioner Who Is Officer of Corporation

Requested by: Mr. Walter J. Cashwell, Jr.
Scotland County Attorney

Question: May a county pollution abatement and industrial facilities financing authority lease a facility, constructed under the provisions of Chapter 159A, North Carolina General Statutes, to a corporate lessee to be subleased to a corporation partly owned by the lessee when a member of the county board of commissioners is president of the corporate sublessee and is also president of a third corporation which is part owner of the corporate sublessee?

Conclusion: A lease or sublease of property constructed by a county pollution abatement and

industrial facilities financing authority pursuant to the provisions of Chapter 159A, North Carolina General Statutes, to a corporation in which a county commissioner has a direct or indirect interest would be in contravention of the express conflict of interest provisions of G. S. 159A-10 and may be in violation of G. S. 14-234.

Inquiry is made whether a conflict of interest would arise under G. S. 159A-10 if a county pollution abatement and industrial facilities financing authority leases a facility, constructed with funds realized from bonds issued by the authority, to a corporation which will then sublease to a second corporation when it appears:

1. That the corporate sublessee is wholly owned by the corporate lessee and a third corporation;
2. The lessee is a customer of the sublessee and both are customers of the third corporation; and
3. A member of the board of county commissioners is president of both the sublessee and the third corporation.

G. S. 159A-10 provides, *inter alia*:

"No officer, member, agent or employee of . . . any political subdivision or agency thereof shall be interested *either directly or indirectly* in any contract with an authority. . . ." (*Emphasis added*).

The statute prohibits any public official or public employee having an interest, either direct or indirect, in any contract with a county pollution abatement and industrial facilities financing authority.

No case has been found which construes the provisions of G. S. 159A-10. The provisions of that statute appear sufficiently similar to those of G. S. 14-234, however, that it is possible to reason by analogy.

This Office has determined that a conflict of interest would exist under G. S. 14-234 in the following instances:

1. Contract between a school board and the wholly owned subsidiary of a parent company in which a board member had stock. 40 N.C.A.G. 565 (1970).
2. Lease of houses by a municipal housing authority from a corporation of which the mayor, who appointed the housing authority, was president and owner. 40 N.C.A.G. 561 (1969).
3. Purchase of supplies by a town from a corporation when a town commissioner was part owner, director, secretary and general manager of a store owned by the corporation. 41 N.C.A.G. 371 (1971).

In an Opinion appearing in 40 N.C.A.G. 566 (1969), it is said:

"The North Carolina statute is merely declaratory of the common law which has always been enforced strictly by the courts to prohibit public officials from being a party to a contract with the municipality or in any manner receiving or being in a position to receive benefits from the body of which he is a member. The courts will not permit the rule - that a man cannot serve two masters - to be evaded by any device or subterfuge. The good faith of the parties is immaterial. *McQuillin, Municipal Corporations*, Vol. 10, §§ 29-97, *et seq.*"

Although in the instant case the lessor is the financing authority, it is noted that the members of the authority are appointed by the county governing body. G. S. 159A-4. Considering the proprietary interests and trade relations that exist among the corporations, it must be presumed that the lease and sublease are for the benefit of all.

The county commissioner is a member of a political subdivision which is empowered to create the financing authority. Since the

execution of the lease by the financing authority is for the benefit of the corporations of which the commissioner is president, a conflict of interest arises under G. S. 159A-10.

Robert Morgan, Attorney General
Henry T. Rosser,
Assistant Attorney General

- - -

17 July 1972

Subject: Escheats; Marketing Cooperatives;
Applicability of G. S. 116A-7

Requested by: Honorable Edwin Gill
State Treasurer

Question: A cooperative marketing association engaged only in the marketing of a single agricultural product for the producers thereof was exempt from escheating certain distributions by virtue of G. S. 116-25. That statute was amended and transferred to G. S. 116A-7 by the 1971 General Assembly, effective July 1, 1971. The association called for a redemption prior to July 1, 1971, of certain equity certificates issued to its members. Is such an association required to escheat the value of such equity certificates called for redemption but not actually redeemed upon expiration of three years from the date of call for redemption?

Conclusion: Under the facts stated, the cooperative marketing association must escheat the value of such certificates three years from the date of call for redemption or other time when it is determined that those certificates are unclaimed.

The inquiry indicates that several years ago the cooperative marketing association organized for the purpose of marketing one agricultural product complied with the United States Department of Agriculture regulation requiring the association's equity capital to be owned by current members. In doing so, in July of 1970, the marketing association called for the redemption of equity certificates issued in 1923 of which \$21,686.44 was then outstanding. As of June 30, 1971, only \$1,673.29 had been retired, leaving a balance in the 1923 certificates of \$20,013.15. Also, in July of 1970, a call for redemption of the 1924 certificates in the amount of \$41,143.90 was called for and as of June 30, 1971, there was a balance of \$38,025.52. At the time of making the call for redemption, the association was arguably exempt from the escheat law provisions in that G. S. 116-25, containing substantially the same provisions as G. S. 116A-7, provided that that paragraph of the statute would not apply "to a cooperative marketing association engaged only in the marketing of a single agricultural product for the producers thereof."

Subsequently, effective July 1, 1971, the escheats statutes were recodified and this provision was transferred to G. S. 116A-7 and that exemption was dropped.

The escheats law as codified in Chapter 116A of the General Statutes is applicable to any unclaimed or derelict property of certain specified kinds. Also, there is a "catch-all" provision in G. S. 116A-4 which covers all other unclaimed personal property held by any person, firm or corporation. Those equity certificates in the marketing cooperative association which remain unclaimed thus fall within the purview of G. S. 116A-7 and should be escheated to the State through the State Treasurer's Office three years after they are determined to be unclaimed. The call for redemption is probably a convenient measuring date for a determination that the shares are unclaimed.

The escheat statute is not being applied retrospectively here but is being applied to property which is unclaimed as of July 1, 1971, and subsequently. The inquiry indicates that there was no cut-off date when such certificates could be redeemed and, indeed, when they are escheated to the State Treasurer's Office, they will be held there subject to claim by the party entitled thereto.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

17 July 1972

Subject: Escheats; Hospitals; Applicability of
Escheats Law to Hospital

Requested by: Mr. Edward E. Hollowell
Attorney
Wake County Hospital System, Inc.

Question: Are the provisions of Chapter 116A of the
General Statutes regarding escheats
applicable to the various types of hospitals
in North Carolina?

Conclusion: The provisions of Chapter 116A of the
General Statutes regarding escheats are
applicable to the various types of hospitals
in North Carolina.

The recent inquiry made on behalf of Wake County Hospital System, Inc., inquires as to the applicability of the escheat law to the various types of hospitals in the State. The inquiry indicates that there are four principal types of hospitals in North Carolina:

1. County hospital authorities operating hospitals such as Wayne County Memorial Hospital;
2. Not-for-profit leasing county facilities such as the Wake County Hospital System, Inc.;
3. Private, not-for-profit hospitals such as Rex Hospital;
4. For profit hospitals such as Mary Elizabeth Hospital.

Chapter 116A of the General Statutes, transferred by Chapter 1135

of the 1971 Session Laws to this codification from provisions in former Chapter 116 of the General Statutes and now administered by the State Treasurer's Office, provides for the escheat of property to the State and the claim by the State to certain types of abandoned property. The statutes have historically been based on constitutional provisions (presently Article IX, sec. 10). The 1971 recodification did not make any substantive changes in the law as far as the administration with regard to hospitals is concerned except for the reporting requirements added by G. S. 116A-7.1. While there are some sections applicable to specifics (see, e.g., G. S. 116A-7(a) dealing with unclaimed salaries, wages and other compensation), there is a "catch-all" provision in G. S. 116A-4 which provides in pertinent part:

"Personal property of every kind, except as is otherwise provided by this Chapter, . . . in the hands of any person . . . , firm or corporation which shall not be recovered or claimed by the parties entitled thereto for three years after the same shall become due and payable, shall be deemed derelict property, and shall be paid or delivered to the Escheat Fund and held without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto."

The language of this statute is all-inclusive and makes no distinction between public and private profit or not-for-profit operations. Therefore, when any property remains unclaimed for a period of three years, it should be paid to the State Treasurer's Office along with the report required by the statute and would be held by the State Treasurer's Office subject to claim.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

17 July 1972

Subject: Clean Water Bond Act of 1971
(Chapter 909, 1971 Session Laws);
Application for Grants; Construction
Begun Before Adoption of Administrative
Rules and Regulations

Requested by: Mr. Marshall Staton, Director
Sanitary Engineering Division
State Board of Health
Department of Human Resources

Question: May a unit of local government after
July 1, 1972, but before the adoption by
State administrative agencies of rules,
regulations and procedures for
administering the Clean Water Bond Act of
1971, proceed with the construction of a
project to add to its water supply system
and remain eligible to apply for a grant for
such project from Bond Act funds?

Conclusion: A unit of government which begins
construction of a project to add to its
water supply system after July 1, 1972,
will not be disqualified from making
application for grant under the Clean Water
Bond Act of 1971 (Chapter 909, 1971
Session Laws) solely because construction
was begun prior to adoption by State
administrative agencies of rules, regulations
and procedures for administering the Act.

A city and a county have indicated that they find it necessary to
begin construction of certain additions to an existing water supply
system soon after July 1, 1972. Since it does not appear that the
administrative agencies charged with responsibility for administering
the Clean Water Bond Act of 1971 will have completed the
preparation of necessary rules, regulations and administrative
procedures, the local government units will be unable to apply for

a grant from Bond Act funds at the time they desire to begin construction. Inquiry is made whether the local units of government will forfeit their eligibility to apply for such grants if they begin construction prior to adoption of rules, regulations and procedures by the administrative agencies.

Section 7(a) of the Clean Water Bond Act of 1971 provides, in pertinent part:

"Sec. 7. *Use of bond proceeds; allocation.* - (a) Grants.

(1) Purpose. All monies paid into the Clean Water Fund . . . shall be used for grants to units of government for the construction of new or the improvement or expansion of existing wastewater treatment works, wastewater collection systems and water supply systems."

Sec. 7(e) provided, *inter alia*: "Allocation of grants under the provisions of this Act, . . . , shall not be made in an aggregate amount exceeding \$30,000,000 in the first fiscal year, *beginning July 1, 1972.* . . ." (*Emphasis added*).

Section 4 of the Act provides for the issuance of \$150,000,000 in bonds of the State, subject to a favorable vote of the qualified voters. The bond election was held May 6, 1972, pursuant to Section 4, and the bond issue was approved.

The Act provides that it shall be administered by the Department of Administration, the Board of Water and Air Resources and the State Board of Health. Section 14 empowers those agencies ". . . to adopt, modify and revoke rules of procedure establishing and amplifying the procedures to be followed in the administration of this act and regulations interpreting and applying the provisions of this act."

As shown by Section 7(e), the General Assembly provided that allocation of grant funds might begin during the fiscal year 1972 - 1973, and thus clearly intended that projects constructed during this period should be eligible to apply for grants under the Act. There is no provision of the Act that makes eligibility for grants contingent upon project construction beginning after the effective

date of adoption of rules and regulations by the administrative agencies. Indeed, to have so provided would have been to empower the administrative agencies to delay construction under the Act for an indefinite period, since no time was specified in the Act for adoption of rules and regulations. This would have been obviously at odds with the purpose and intent of the Act, as expressed in Section 7(a), and Section 7(e).

It is concluded that projects upon which construction was begun prior to the adoption of rules and regulations by the administrative agencies will not be disqualified for that reason alone from applying for grants under the Clean Water Bond Act of 1971.

It should be noted, however, that the administrative agencies, through adoption of rules and regulations under the Act, may establish the form, method and time for making application for grants. Local units of government desiring to apply for grant funds might find that they are precluded unless they procure and closely follow the rules and regulations when adopted.

Robert Morgan, Attorney General
Henry T. Rosser,
Assistant Attorney General

- - -

17 July 1972

Subject: Taxation; Privilege License Tax; Selling
Illuminating Oil or Greases or Benzine,
Naphtha, Gasoline or Like Products;
Automotive Service Stations;
G. S. §§ 105-72 and 89

Requested by: Mr. Nelson W. Taylor
Morehead City Attorney

Question: May a city levy a license tax upon a service
station which sells gasoline, under the
authority of G. S. 105-72?

Conclusion:

Yes, but only if (1) all persons, firms or corporations engaged in the business of selling illuminating oil or greases or benzine, naphtha, gasoline or other products of like kind are similarly taxed and (2) each taxpayer maintains in the city an agency, station or warehouse for the distribution or sale of such products.

The attorney for Morehead City has inquired what the proper privilege tax should be upon service stations. The answer will depend largely upon the provisions of the statute under which the taxing ordinance is drawn. For example, G. S. 105-89 permits counties, cities and towns to levy a license tax upon "automotive service stations" not in excess of one-fourth of that levied by the State. In the case of Morehead City, the tax could not exceed \$5.00, since the State tax is dependent upon municipal population, and the population of Morehead City would indicate a State tax of \$20.00.

However, under the provisions of G. S. 105-72, which is broader in scope, a city "in which there is located an agency, station or warehouse for the distribution or sale of such commodities enumerated in this section" may levy a license tax of \$25.00, in the case of a municipality of less than 10,000 population, upon "every person, firm or corporation engaged in the business of selling illuminating oil or greases or benzine, naphtha, gasoline or other products of like kind." Therefore, it appears that the city could impose a license tax under G. S. 105-72, but it would have to be levied upon the entire class of persons, firms and corporations engaged in the enumerated business, rather than individual members of the class. For example, if service stations, drug stores, grocery stores and hardware stores all sell "benzine, naphtha, gasoline or other products of like kind," it would be discriminatory to single out only service stations for taxation, under the authority of G. S. 105-72. Thus, it seems likely that the sale of cigarette lighter fluid, dry cleaning fluid or portable lantern or stove fuel would bring a business within the taxable class. By the same token, each taxable business would have to be found to maintain within the city an agency, station or warehouse for the distribution or sale of such products.

If a city chose to enact ordinances under both G. S. 105-89 and G. S. 105-72, it is doubtful that a service station could be taxed under each. It is more likely that the ordinance taxing service stations as a class, being more specific, would preempt the ordinance taxing businesses selling petroleum products. In addition, the two ordinances would clearly raise serious questions of public policy implicit in double taxation by a single taxing authority. The better view, we think, would be to apply one but not both ordinances to a single business.

Robert Morgan, Attorney General
Myron C. Banks,
Assistant Attorney General

- - -

17 July 1972

Subject: Licenses and Licensing; Plumbing and Heating Contractors; Necessity of Obtaining a License under the Grandfather Clause Prior to Engaging in the Business of Plumbing and Heating Contracting

Requested by: Mr. F. O. Bates
Executive Secretary of the State Board of Examiners of Plumbing and Heating Contracting

Question: Is an unlicensed person, who has engaged in, or offered to engage in, the business of plumbing and heating or air-conditioning contracting since July 6, 1971, in areas where Chapter 87 did not previously apply, in violation of Chapter 87 of the North Carolina General Statutes as amended by the 1971 General Assembly?

Conclusion: No. The Amendment to Article 2 of Chapter 87 was effective on the date of

ratification, July 6, 1971; however, those not previously covered have until December 31, 1972, before they must secure a license prior to engaging in the business of plumbing and heating or air-conditioning contracting without violation of Article 2, Chapter 87 of the North Carolina General Statutes.

Prior to amendment by the 1971 General Assembly, Article 2 of Chapter 87, requiring a license to engage in the business of plumbing and heating contracting, applied only in cities and towns having a population of more than 3,500 people. The 1971 General Assembly amended Article 2 of Chapter 87 to provide that G. S. 87-21(c) shall apply to all those persons, firms and corporations engaging in the business of plumbing and heating contracting. The effective date of the amendment was July 6, 1971; however, there was no saving or transitional clause provision for those not previously covered by Chapter 87 who were lawfully engaged in the business of plumbing and heating and air-conditioning contracting prior to July 6, 1971. The legislature provided, however, at the same time, a grandfather clause for those who had engaged in the business of plumbing and heating contracting in areas not previously covered. G. S. 87-21(d) as amended is as follows:

"G. S. 87-21. *Definitions; contractors licensed by Board; examination; posting license, etc.*-. . . (d) License Granted Without Examination. - Any resident of North Carolina who was engaged in business as defined in this Article in any city, town or other area in which General Statutes 87, Article 2 did not previously apply, shall receive license without examination upon submission of an application on forms provided by the Board, together with reasonable proof that he was engaged in business as defined and upon payment of the annual license fee; provided, the completed application is submitted to the Board on or before December 31, 1972."

By the express provision of this section, those who engaged in the business of plumbing and heating contracting in areas where

Article 2 of Chapter 87 was not applicable have until December 21, 1972, to obtain a license without an examination. If the Act were interpreted to require a license upon ratification of those in areas not previously covered by Article 2, Chapter 87, approximately 4,300 would have been immediately required to obtain a license (a physical impossibility), operate illegally, or temporarily go out of business until they could comply with the time-consuming provisions of the grandfather clause as set out in G. S. 87-21(d). Certainly, by the enactment of the grandfather clause at the same time Article 2 of Chapter 87 was amended to cover all of the areas in North Carolina, the General Assembly has shown that it was not their intention to declare unlawful or put out of business those persons, firms or corporations lawfully engaged in the business of plumbing and heating contracting in areas not previously covered after July 6, 1971. It is presumed that the legislature acted in accordance with reason and common sense and that it did not intend an unjust or absurd result. *King v. Baldwin*, 276 N. C. 316.

It is the opinion of this Office that those not previously covered have until December 31, 1972, before they must secure a license to engage in the business of plumbing and heating and air-conditioning contracting without violating the provisions of Article 2 of Chapter 87 of the North Carolina General Statutes.

Robert Morgan, Attorney General
James E. Magner,
Assistant Attorney General

- - -

17 July 1972

Subject: Insurance; Automobile Liability Insurance Policies; Terminations by Cancellation and Refusal to Renew; Applicability of 48-Month Exclusion

Requested by: The Honorable Edwin S. Lanier
Commissioner of Insurance

Question: Under the provisions of G. S. 20-310, would continuous automobile liability insurance coverage written voluntarily or under the North Carolina Automobile Assigned Risk Plan (old assigned risk plan) followed by voluntary coverage prior to January 1, 1972, and continuous coverage under the North Carolina Automobile Insurance Plan (new assigned risk plan) followed by voluntary coverage, count toward completion of the consecutive period of coverage of 48 months or longer set forth in subdivision (g) (3) of the statute?

Conclusion: No period of continuous automobile liability insurance coverage prior to January 1, 1972, written either voluntarily or under the North Carolina Automobile Assigned Risk Plan would count toward the completion of a period of 48 consecutive months of coverage necessary to exclude a policy from the provisions of G. S. 20-310. Nor would coverage under the North Carolina Automobile Insurance Plan count toward completion of the 48-month period.

The Commissioner of Insurance has requested that the Attorney General render an opinion concerning the financial responsibility laws pertaining to the termination of insurance policies. Specifically, the Commissioner desires to know:

- (1) Whether continuous automobile liability insurance coverage under a policy written on a voluntary basis for a period prior to January 1, 1972, whereby the total coverage was for 48 months or more would exclude such a policy from the provisions of G. S. 20-310;
- (2) Whether continuous automobile liability insurance coverage under a policy written on a voluntary basis combined with prior

coverage by the same company under the North Carolina Automobile Insurance Plan (new assigned risk plan) resulting in total continuous coverage of 48 months or longer would exclude such a policy from the provisions of G. S. 20-310;

(3) Whether continuous automobile liability insurance coverage under a policy written on a voluntary basis combined with prior coverage by the same company under the North Carolina Automobile Assigned Risk Plan (old assigned risk plan) resulting in total continuous coverage of 48 months or longer would exclude such a policy from the provisions of G. S. 20-310?

G. S. 20-310 (g) in pertinent part reads as follows:

"(g) Nothing in this section shall apply:

* * * *

(3) . . . to any policy which has been written or written and renewed for a consecutive period of 48 months or longer."

It is understood that the Commissioner has concluded that continuous automobile liability coverage written on a voluntary basis for a period prior to January 1, 1972, will not count toward completion of the period of continuous coverage for 48 months or longer referred to in subdivision (g) (3) of the statute. We concur fully with that opinion.

Session Laws 1971, c. 1205, s. 6, provides:

"Section 4 (codified as G. S. 20-310) of this act *shall become effective on January 1, 1972*, but shall apply only to insurance policies written or renewed after said date." (*Emphasis added.*)

This language demonstrates that the undeniable intent of the General Assembly was that nothing contained in G. S. 20-310 would affect policies written or renewed before January 1, 1972.

"The fundamental rule of statutory construction, to

which all other rules are subordinate, is that the court shall, by all aids available, ascertain and give effect . . . to the intention or purpose of the legislature as expressed in the statute." 82 C.J.S., Statutes, s. 321 (See also *Ballard v. Charlotte*, 235 N. C. 484, 70 S. E. 2d 575 (1952)).

In support of this position is the purpose of the financial responsibility act that every motorist maintain continuously proof of financial responsibility. The statute at hand must be considered in context with the other provisions of these laws and the purpose thereof (*Perkins v. Insurance Co.*, 274 N. C. 134, 161 S. E. 2d 536 (1968)) and the obvious purpose of G. S. 20-310 was to provide to the insured some degree of continuous liability insurance coverage. It is well settled that ". . . in the interpretation of a statute of doubtful meaning, it is proper to take into consideration its purpose . . . intended to be efficiently embodied in the enactment." 50 Am. Jur., Statutes, s. 303. Interpreting G. S. 20-310 in light of its purpose, it becomes clear that this purpose would be frustrated if coverage prior to January 1, 1972, were allowed to count toward completion of the 48-month period of continuous coverage necessary to exclude a policy from the provisions of the statute. Since many persons have been covered under policies, written, or written and renewed, for a consecutive period of 48 months or longer, the act would afford these persons no protection whatsoever. Therefore, the statute would be ineffective in many cases in abating the particular problem that it was designed to prevent—unchecked cancellations and refusals to renew by insurance companies.

Question (2) can be answered by merely referring to the definitional section of the statute. Under Subsection (a) (1) of G. S. 20-310, it is stated that "'policy' shall not apply to any policy issued under the North Carolina Automobile Insurance Plan." Therefore, since Subdivision (g) (3) applies "to any *policy*" (*emphasis added*), coverage under the North Carolina Automobile Insurance Plan does not come within the exclusion by definition. Therefore, coverage under the North Carolina Automobile Insurance Plan will not count toward completion of the 48-month period set forth in Subdivision (g) (3) of the statute.

The result reached in question (1) above is determinative of question (3). The North Carolina Automobile Insurance Plan replaces the North Carolina Automobile Assigned Risk Plan with the former applying to all policies written or renewed after January 1, 1972. Session Laws 1971, c. 1205, s. 6, provides:

"Section 3 (G. S. 20-279.34) of this act shall become effective on January 1, 1972, but shall apply only to insurance policies written or renewed after this date. The present provisions of G. S. 20-279.34 and the plan adopted pursuant thereto shall apply to all insurance policies written or renewed under the North Carolina Automobile Assigned Risk Plan prior to January 1, 1972."

Therefore, coverage under the North Carolina Automobile Assigned Risk Plan would not count toward completion of the period of 48 months of continuous coverage set forth in Subdivision (g) (3) of the statute.

Robert Morgan, Attorney General
Benjamin H. Baxter, Jr.,
Associate Attorney

- - -

17 July 1972

Subject: Intoxicating Liquors; Beer; Sunday Sales;
County Regulation of; Straw Vote

Requested by: Mr. John R. Jenkins, Jr.
Bertie County Attorney

Question: May the Board of Commissioners of Bertie County call a special election or otherwise submit to the voters of the county at the general election to be held on November 5, 1972, the question of whether beer shall be sold in Bertie County on Sundays?

Conclusion: The Board of County Commissioners may not submit to the voters of the county the question of whether beer should be sold on Sundays in the County absent some special or general authorizing legislation.

The inquiry indicates that the County Commissioners of Bertie County wish to submit to the voters of Bertie County the question of whether they will allow or disallow the Sunday sale of beer in the County.

G. S. 18A-33(b) allows counties and municipalities in the State to regulate and prohibit the Sunday sale of beer and/or wine from 1:00 on Sunday until 7:00 a.m. on the following Monday although excluded from that authority are those establishments having a permit under Article 3 of Chapter 18A (the so-called "brown-bagging" establishments).

The section provides that the powers vested in municipalities are exclusive within the corporate limits and the powers vested in the county commissioners are exclusive in all parts of the counties not included within municipal corporate boundaries.

It is axiomatic that the counties have only that authority which is delegated them by the General Statutes or necessarily implied by law. 2 Strong, N. C. Index 2d, Counties, §2.

"There is no inherent power in any governmental body to hold an election for any purpose, and an election held without affirmative constitutional or statutory authority is a nullity. . . ." 3 Strong, N. C. Index 2d, Elections, §1.

The counties have not been given authority to hold an election in the nature of a straw vote as to whether they should undertake to prohibit Sunday sales of beer and/or wine and, therefore, there is no authority for the Board of County Commissioners of Bertie County to hold such an election.

This conclusion assumes that there are no local acts on the books as to Bertie County allowing the County Commissioners to hold

such straw vote elections since if there are such local acts, that would be sufficient authority.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

20 July 1972

Subject: Public Officers & Employees; ABC Board
Employees; Not Employees of the
Municipality or County

Requested by: Mr. W. Charles Cohoon
Chairman
State Board of Alcoholic Control

Question: Are employees of county and city ABC
boards considered as employees of the city
or county?

Conclusion: No.

A county or municipal ABC board is a separate political subdivision and employees of such boards are not employees of the county, municipal or State governments. G. S. 18A-16 creates a county board of alcoholic control in each county that is permitted to engage in the sale of alcoholic beverages. Local acts authorizing ABC systems in a municipality create a municipal ABC board and generally the only authority which the municipality has over such board is the power to appoint the members of the ABC board. Under G. S. 18A-16, the board of county commissioners, the county board of health and the county board of education appoint the members of the county ABC board. Other than this appointive power, the county and municipality have no control over the municipal or county ABC board. G. S. 18A-17 confers certain powers, authority and duties upon county ABC boards and these powers, duties and authorities are conferred in local acts upon

municipal ABC boards. All the powers and duties conferred upon county boards are subject to the powers conferred upon the State ABC Board. The State ABC Board, under G. S. 18A-15, is given control over county and municipal ABC boards in certain areas.

The case of *Hunter v. Retirement System*, 224 N. C. 359, involved the question as to whether employees of the New Hanover County ABC Board were entitled to benefits under the City and County Retirement System. The Court discussed various sections of Chapter 18 of the General Statutes, now Chapter 18A of the General Statutes, and stated that there is no authority whatsoever vested in the City of Wilmington or County of New Hanover to control the Alcoholic Beverage Control Board of New Hanover County, to determine the number of its employees, to fix their salaries or to assign their duties or in any way to interfere with the discretionary powers vested in the State and county boards of alcoholic beverage control. The Court concluded that the employees of the Alcoholic Beverage Control Board of New Hanover County were not employees of the County of New Hanover nor of the City of Wilmington and were not eligible to the benefits of the retirement system.

This office has previously concluded that a county or municipal ABC board was a separate political subdivision of State government and therefore employees of a county or municipal ABC board were not employees of the municipality, the county or State government.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

20 July 1972

Subject: Insurance; Automobile Liability Insurance
Policies; Termination by Rescission;
Legality of

Requested by: Honorable Edwin S. Lanier
Commissioner of Insurance

Question: Whether under the financial responsibility laws, an insurer can rescind a policy of automobile liability insurance because of material misrepresentations made by the insured in an application for a policy thereby making it void *ab initio*?

Conclusion: Where an insured makes material misrepresentations in an application for a policy of automobile liability insurance, the insurer may not rescind the policy thereby making it void *ab initio*.

The Commissioner of Insurance has requested that the Attorney General render an opinion regarding the financial responsibility laws pertaining to the termination of policies of automobile liability insurance. Specifically, the Commissioner wishes to know whether an insurer can terminate such a policy by rescission because of false and material representations made by the insured in the application for the policy thus making the policy void *ab initio*.

The Insurance Department has received information of a termination by a carrier in the following factual situation:

On February 24, 1972, the insured completed and executed an application for automobile liability insurance which contained false statements. Based upon this application, the carrier issued an automobile liability policy covering the insured. A routine driver's license check with the North Carolina Department of Motor Vehicles revealed the misrepresentations. Based upon the misrepresentations, the carrier voided the policy *ab initio* and by letter dated April 20, 1972, gave notice thereof to the insured.

The Financial Responsibility Act was passed by the General Assembly to provide protection to persons injured or damaged by the negligent operation of automobiles. *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. 2d 161 (1962), and *Perkins v. America Mut. Fire Ins. Co.*, 274 N. C. 134, 161 S. E. 2d 536 (1968). To effect this purpose, the Act was designed to ensure that operators of motor vehicles maintain continuous financial responsibility. *Crisp v. State Farm Mutual Auto. Ins. Co.*, 256 N. C. 408, 124 S. E. 2d 149 (1962). Hence, the

Act contemplates that termination of automobile insurance policies shall only be made pursuant to its provisions and only in the specific cases set out therein. G. S. 20-310. Also, the Act provides that the operation of a motor vehicle without financial responsibility is a misdemeanor. G. S. 20-313(a).

To allow an insurer to rescind a policy for fraud thus making it void from its inception is inconsistent with the Financial Responsibility Act. We recognize that the common law or statutory right to rescind *ab initio* for fraud would normally apply to an insurance contract. However, this common law or statutory right cannot be reconciled with the financial responsibility laws whose purpose as stated above is to assure continuous liability coverage. *Teeter v. Allstate Insurance Company*, 192 N.Y.S. 2d 610, 9 A.D. 2d 176 (1959). The fact that the Act prescribes penal sanctions to assure compliance and places the burden upon the insured to comply therewith is determinative. To allow rescission to be effective retroactively as of the date of issuance of the policy would make it impossible for the insured to either procure new insurance or surrender his license plates prior to the date upon which the termination of the coverage became effective. The insured would be retroactively rendered guilty of a misdemeanor for having operated a vehicle from the date of issuance to the date of rescission of the policy even though his conduct was lawful at the time. *Teeter v. Allstate Insurance Company*, *supra*. Therefore, we conclude that such a result could not have been intended by the legislature.

The next question that must be resolved is whether under the Act, an insurer can terminate a policy due to fraud prospectively. The word "cancel" "is not used in the statute in its technical insurance sense but in its colloquial sense, as meaning a termination of coverage under a policy in any manner prior to the expiration date therein specified." *Teeter v. Allstate Insurance Company*, *supra*. Therefore, since a termination for fraud is not specified as a reason for cancellation in G. S. 20-310(d), we conclude that a policy of insurance cannot be terminated in the fact situation described by the Commissioner.

We are not unmindful of the seemingly hopeless plight of the insurer in a case such as this. The General Assembly did, however, provide for a 60-day underwriting period during which time the insurer may

cancel a policy for any reason. This would seem ample time for the insurer to discover such fraud and cancel the policy. An insurer acting diligently can easily secure the driving record of its insured from the Department of Motor Vehicles and cancel a policy well within the 60-day underwriting period.

Robert Morgan, Attorney General
Benjamin H. Baxter, Jr.,
Associate Attorney

- - -

31 July 1972

Subject: Taxation; Gift Tax; Decedent's Estate;
Assets Includable; G. S. 105-108;
G. S. 105-109

Requested by: Mr. B. E. Rogers, Director
Inheritance & Gift Tax Division
N. C. Department of Revenue

Question: If a gift tax has not been paid by a decedent upon the transfer of an asset later found to be includable in his estate, will the payment of the gift tax by the decedent's executor or administrator constitute an allowable deduction against his estate for inheritance tax purposes?

Conclusion: Gift taxes paid by an executor and imposed upon the transfer of assets found to be includable in a decedent's estate are not deductions for North Carolina inheritance tax purposes.

G. S. 105-8 provides, in relevant part:

"In case a tax has been imposed under Schedule G of the Revenue Act of 1937, or under subsequent acts,

upon any gift, and thereafter, upon the death of the donor, the amount thereof is required by any provision of this Article to be included in the gross estate of the decedent, then the tax paid with respect to such gift shall constitute an advance payment of the tax which would otherwise be chargeable against the beneficiaries of the estate under the provisions of this Article, and shall be applied in reduction of said tax. . . ."

G. S. 105-9 provides, in relevant part:

"*Deductions.*—In determining the clear market value of property taxed under this Article, or schedule, the following deductions, and no others, shall be allowed:

(1) Taxes accrued and unpaid at the death of the decedent and unpaid ad valorem taxes accruing during the calendar year of death."

In *McGill v. Oklahoma Tax Commission*, 258 P. 2d 1180 (Okla. 1953), it was held that gifts made in contemplation of death, and therefore subject under the Federal Estate Tax Act to the payment of federal estate taxes, were subject to a contingent gift tax liability that disappeared upon the death of the donor. Upon his death, the tax on gifts in contemplation of death reappeared as an estate tax and was not a debt deductible under Oklahoma's inheritance tax law.

In *Smith v. Shaughnessy*, 318 U. S. 176, 63 S. Ct. 545, 87 L. Ed. 690, (1943), it was pointed out that where a federal gift tax is paid on transfers in contemplation of death, it merely constitutes a "down payment" on the estate tax that is subsequently imposed on the transfer. As the court expressed it:

"Under the statute the gift tax amounts in some instances to a security, a form of 'down payment' on the estate tax which secures the eventual payment on the latter. It is in no sense double taxation."
318 U. S. 179.

The California Court of Appeal held in *In Re Estate of Gioletti*, 24 C.A. 3d 921 (1972) that the amount of federal gift tax that is paid upon the transfer of property in contemplation of death, when the property subsequently becomes subject to federal and State inheritance taxes, and that is credited against the amount of the federal estate tax, is not deductible from the appraised value of the property in determining California inheritance tax.

The State of New Jersey has held that a federal gift tax paid on a gift made in contemplation of death is nondeductible from the appraised value of an estate in computing the state inheritance tax liability. *In Re Estate of Shivers*, 105 N. J. Super. 242, 251 A. 2d 771 (1969). In that case, the court said:

"There is no obligation to pay the gift tax as a separate liability, in the case of gifts made in contemplation of death, when the same items are included in the federal estate tax return. Gifts in contemplation of death are includable as assets of the donor's estate and subject to federal estate tax and a gift tax paid on such gifts is a mere credit on account of the calculated federal estate tax. If the gift tax has not been paid, the estate simply receives no credit. In the final analysis, the tax paid, by whatever label is put on it by the executor, is the federal estate tax."

The federal government denies as a deduction in computing federal estate taxes any state gift tax paid on a gift in contemplation of death and subsequently credited to the state inheritance tax. Internal Revenue Bulletin 1971-31, provides that:

"Since the provisions of section 2053(c)(1)(b) of the Code preclude the deduction of death taxes, it is further held that where, under state law, state gift taxes paid after the donor-decedent's death are regarded as prepayments of state inheritance taxes, such payments cannot be deducted from the value of his gross estate."

Under G. S. 105-8, North Carolina treats any gift tax paid when

the asset is subsequently included in the decedent's estate as an "advance payment" of the estate tax. As such, as in other jurisdictions, it is not in reality or substance a payment of a gift tax, but a "down payment" of the estate tax and therefore not a deduction under G. S. 105-9 for "taxes accrued and unpaid at the death of the decedent." That which is in reality an estate tax cannot be converted into a deductible gift by the mere mechanics of filing a gift tax return when the amount of the gift tax is allowed as a credit against the estate tax. *Smith v. Shaughnessy, supra*. We cannot presume that the collective conscience of the legislature intended to create and sanction a situation whereby those who choose to transfer their property by will or the laws of intestacy would incur a greater tax obligation than those who would transfer in contemplation of death.

Robert Morgan, Attorney General
George W. Boylan,
Associate Attorney

- - -

31 July 1972

Subject: Taxation; Sales Tax; Laundries and Dry Cleaners; Rug Cleaning Services; G. S. 105-164.4(4)

Requested by: Mr. Eric L. Gooch, Director
Sales & Use Tax Division
N. C. Department of Revenue

Questions: (1) Are the gross receipts from rug cleaning services conducted on the business premises of a rug cleaner subject to sales tax?

(2) Are the gross receipts from rug cleaning services conducted on the premises of the rug cleaner's customer subject to sales tax?

Conclusions: (1) Yes.

(2) No.

The Director of the Sales & Use Tax Division, North Carolina Department of Revenue, has asked that certain provisions of Sales & Use Tax Regulation 24 be reviewed in the light of G. S. 105-164.4(4) and the following circumstances:

Taxpayer A, a "rug and floor cleaner", maintains at its place of business seventeen rug hangers, each of which can accommodate a rug up to 12' x 12' in size. It picks up rugs, cleans them at its premises with a portable shampoo machine, and delivers the cleaned rugs to its customers. In addition to this activity, it engages in cleanup work resulting from fires and smoke damage, including the cleaning of walls, ceilings and floors. It also cleans rugs and carpets on the customer's premises.

Taxpayer B may also be characterized as a rug cleaner. In its building, it has five rug poles, each thirteen feet long and capable of accommodating rugs up to twelve feet wide. It engages in the cleaning of rugs at its place of business, using portable rug cleaning equipment, and also engages in the cleaning of carpets, rugs, walls, floors and furniture in homes and offices, particularly where there has been fire and smoke damage.

G. S. 105-164.4(4) imposes a sales tax upon the gross receipts of "every person, firm or corporation engaged in the business of operating a pressing club, cleaning plant, hat blocking establishment, dry cleaning plant, laundry (including wet or damp wash laundries and businesses known as launderettes or launderalls) or any similar type business. . . ."

As it applies to rug cleaning services, Sales & Use Tax Regulation 24 interprets G. S. 105-164.4(4) in this way:

"(a) The gross receipts derived from the following are subject to the 3% sales or use tax:

(1) Services rendered by pressing clubs,
cleaning plants, hat blocking
establishments, dry cleaning plants,

laundries, including wet or damp wash laundries and businesses known as launderettes and launderalls, and all similar type businesses.

(2) The rental of clean linen, towels, wearing apparel and similar items.

(3) Soliciting cleaning, pressing, hat blocking and laundry.

(4) Rug cleaning services performed by persons operating rug cleaning plants or performed by any of the businesses named in this Regulation irrespective of whether the rug cleaning service is performed on the customer's location or at the plant. Persons who do not operate any of the businesses included in this Regulation and only perform house cleaning or building maintenance services and clean rugs at the customer's location do not come within the provisions of this Regulation."

Clearly, under Regulation 24, the gross receipts of Taxpayers A and B, derived from the performance of rug cleaning services, wherever done, are subject to tax. The question is whether the Regulation is supported by the law.

Common to each of the businesses taxed under G. S. 105-164.4(4) is a strong sense of physical location (a "club", a "plant", a "laundry", an "establishment") indicative of an intent to tax receipts from business carried on at a business premises. While we feel that a rug cleaning business bears sufficient similarity to the businesses more specifically named in the statute to bring it within its terms, we are of the opinion that the rule of construction which requires a statute imposing a tax to be strictly construed, against the State and in favor of the taxpayer, in cases of doubt, militates against that part of the Regulation which seeks to tax those receipts derived from services rendered at the customer's home or office.

In other words, gross receipts derived from rug cleaning services rendered at the plant or business premises of the rug cleaner are subject to tax. However, those derived from services rendered at the customer's premises, in our opinion, would not be. That portion of Regulation 24 which permits the imposition of the tax in the latter example is, we believe, in error.

To the extent that it is in conflict with this opinion, the opinion on the same subject, dated 17 July 1961, is hereby modified.

Robert Morgan, Attorney General
Myron C. Banks,
Assistant Attorney General

- - -

1 August 1972

Subject: State Departments, Institutions and
Agencies; Correction, Department of;
Liability for Hospitalization of Inmates

Requested by: Mr. Martin R. Peterson
Chief of Custody and Security
N. C. Department of Correction

Questions: Is the North Carolina Department of
Correction required to pay medical and
hospital expenses for an inmate requiring
hospitalization outside the confines of the
Department of Correction in the following
instances:

(1) An inmate is permitted to leave the
confines of his unit on an authorized
Community Volunteer leave. He escapes
from his sponsor and is injured. The inmate
is picked up immediately by police and
delivered to the hospital for treatment. He
is then turned over to the custody of the

Department of Correction after being released from the hospital.

(2) An inmate escapes from the Department of Correction. He is injured in a car wreck while being chased by Highway Patrol or police who take him into custody and deliver him to a hospital. The Department of Correction is notified of his hospitalization and he is returned to the Department's custody after release from the hospital.

(3) An inmate, who has escaped from the Department of Correction, is imprisoned in another jurisdiction. He is released to the local sheriff to await arrival of officers from the North Carolina Department of Correction to take him into custody. In the meantime, while being held for North Carolina on our detainer, it becomes necessary to hospitalize him. The inmate is released to the Department's officers as soon as the hospitalization is terminated.

(4) An inmate escapes from the Department of Correction and while on escape has occasion to enter a hospital. He leaves the hospital prior to being apprehended by law enforcement officers. The hospital attempts to bill the North Carolina Department of Correction because he is an inmate.

(5) An inmate is granted an extension of confinement limits pursuant to G. S. 148-4 in the form of either a home leave or a Community Volunteer leave and it becomes necessary that he be hospitalized. Is the Department of Correction required to pay his medical and

hospital expenses if he notifies the unit granting the extension or if he fails to notify the unit.

Conclusions:

(1) Yes.

(2) Yes.

(3) Yes.

(4) No.

(5) Yes.

"A prisoner may be taken, when necessary, to a medical facility outside the State prison system." G. S. 148-19(a).

In each of the first three fact situations presented, the inmate has been taken into custody by law enforcement officials on behalf of the Department of Correction. In the first two cases, the inmate has escaped, has been apprehended by the police, and then delivered to a hospital for treatment. The officers would be acting as agents, at least constructively, for the Department of Correction when apprehending the inmate. In fact, in North Carolina any citizen has authority to apprehend an escaped convict and retain him in custody to be delivered over to the State Department of Correction. G. S. 148-40. In the third case, the sheriff would also be acting as an agent for the Department of Correction while maintaining custody of the inmate, pursuant to a North Carolina detainer, awaiting officers from this State to take the inmate into custody. In these cases, the inmate is in the constructive custody of the North Carolina Department of Correction, and therefore the Department should pay the medical and hospital expenses incurred.

In the fourth case, the inmate, while on escape, enters and departs the hospital prior to being apprehended by law enforcement officials. During this time, the inmate has neither been in the actual nor in the constructive custody of the North Carolina Department of Correction. The hospital was not treating the inmate under the expectation that they were performing services as agents for, or on behalf of, the Department of Correction. Therefore, the Department

would not be liable for medical expenses incurred by the inmate during this period of time.

In the fifth case, when an inmate is granted an extension of his confinement limits under G. S. 148-4, he is still under the custody and control of the Department of Correction and therefore the Department should pay for any hospitalization required.

Robert Morgan, Attorney General
Edward L. Eatman, Jr.,
Assistant Attorney General

- - -

1 August 1972

Subject: Mental Health; Examination and
Hospitalization of Inebriates; Public
Drunkenness As a Criminal Offense

Requested by: Colonel Edwin C. Guy
Commanding
State Highway Patrol

Question: Under current North Carolina General
Statutes are peace officers authorized to
arrest persons for the offense of public
drunkenness?

Conclusion: Under current North Carolina General
Statutes peace officers are authorized to
arrest persons for the offense of public
drunkenness.

This question has arisen due to an apparent misunderstanding as to the effect of Article 7, Chapter 122 of the North Carolina General Statutes. This Article is entitled "Judicial Hospitalization" and provides procedures for examination of inebriates and mentally ill persons and admission of these persons to the proper State hospital (or other institution) for observation and treatment, when appropriate.

Due to the nature of the present question, this opinion will be limited to consideration of individuals falling within the category of "inebriates." G. S. 122-36(c) defines this term as follows:

"The word 'inebriate' shall mean a person habitually so addicted to alcoholic drinks or narcotic drugs or other habit forming drugs as to have lost the power of self-control and that for his own welfare or the welfare of others is a proper subject for restraint, care, and treatment."

In cases involving inebriates, Article 7 requires the clerk of superior court to take action to secure custody of the individual concerned in an appropriate fashion, to conduct a hearing on the issue, and to dismiss the proceedings or to issue an order for hospitalization, as warranted by the circumstances. However, these proceedings are precipitated only after receipt by the clerk of an affidavit stating that the alleged inebriate is in need of observation and admission, together with a request for examination of the person from "some reliable person having knowledge of the facts." See G. S. 122-60 through G. S. 122-62. Although an exception may be made to this rule requiring an affidavit in a situation "when the clerk of the superior court has other valid knowledge of the facts of the case to cause" such examination (see G. S. 122-62), a specific order of the clerk is required in any case before any of the actions authorized by Article 7 leading to examination and hospitalization can be taken.

On the other hand, public drunkenness is proscribed by G. S. 14-335. While subsection (c) provides that chronic alcoholism can be an affirmative defense available to an individual charged with public drunkenness, the remainder of this section provides that public drunkenness is a crime punishable by a fine or imprisonment. In fact, any doubt that the legislators intended the statutes in question to be complementary to rather than conflicting with each other is laid to rest by specific statutory provisions permitting the trial judge to order the clerk of superior court to institute judicial hospitalization proceedings under Article 7, where appropriate, in cases wherein a person has been acquitted of public drunkenness by reason of chronic alcoholism. See G. S. 14-335(c), G. S. 122-65.7, and G. S. 122-65.8.

Since public drunkenness is a criminal offense within this State, *ipso facto*, peace officers within North Carolina are authorized to arrest persons committing this offense.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

1 August 1972

Subject: Mental Health; Detention of Inebriates and Mentally Ill Persons; Authority of Clerk of Superior Court to Issue Custody Order to Sheriff

Requested by: Honorable Ralph L. McSwain
Sheriff
Stanly County

Question: Does the clerk of superior court have the authority to direct the sheriff to take into custody a person alleged to be an inebriate or a mentally ill person?

Conclusion: The clerk of superior court has the authority to direct the sheriff to take into custody a person alleged to be an inebriate or a mentally ill person.

This is one of the multiple questions which have arisen because of the following provisions of G. S. 122-61, effective July 1, 1972:

"§ 122-61. *Detention of persons alleged to be mentally ill or inebriate and dangerous to themselves or others.*— If the affidavit filed in accordance with the provisions of G. S. 122-60 states that the alleged mentally ill person or alleged inebriate is likely to endanger himself or others, he may be taken into

custody and detained in his own home, in a private or general hospital, or in any other suitable facility as approved by the local health director for such detention, upon an order of the clerk of the court. He shall not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The Department of Mental Health shall make available to the clerk of court such medical services and transportation necessary to effect the detention deemed necessary.

The clerk shall expedite the hearing, and, if the alleged mentally ill person or alleged inebriate is found to be in need of hospitalization, the clerk shall expedite the transmission of this information to the proper State hospital so that the alleged mentally ill person or alleged inebriate can be admitted without any undue delay."

In interpreting this new section, it must be recognized that it only purports to deal with emergency type detention of an inebriate or mentally ill person, where necessary, prior to a hearing by the clerk of superior court and prior to expeditious admission to the proper State hospital if that action is directed. Thus, it must be considered as a part of the "judicial hospitalization" proceedings and must be interpreted in conjunction with the other sections included in Article 7, Chapter 122 of the General Statutes--*i.e.*, G. S. 122-60 through G. S. 122-65.5.

G. S. 122-60 provides that some reliable person having knowledge of sufficient facts may start proceedings calculated to result in judicial hospitalization by filing with the clerk of superior court an affidavit to the effect that the potential patient is in need of observation or admission in a proper hospital, together with a request for examination of such individual. G. S. 122-62 then provides that, upon the clerk's receipt of the affidavit and request (or when the clerk has other adequate valid knowledge of the facts), he shall direct two qualified, uninvolved physicians to examine the potential patient. As a tool available to the clerk for insuring the performance of the examination, this latter section of the General Statutes contains the following language: "The clerk is authorized to order

the alleged mentally ill person or inebriate to submit to such examination, and it shall be the duty of the sheriff or other law enforcement officer to see that this order is enforced."

The temporary detention authorized by G. S. 122-61 in cases where that type of action is necessary in order to avoid danger to the potential patient or to others is clearly a preliminary part of the proceedings leading up to the examination required by G. S. 122-62 for the purpose of determining whether an individual should be judicially hospitalized. This new section does not serve to relieve the sheriff or any other peace officer from cooperation with and assistance to the Department of Mental Health in adequately detaining the individual, nor does it serve to relieve these officials from their obligations to see that the clerk's orders are enforced. Therefore, when it is necessary to utilize the services of the sheriff or other law enforcement officer in order to take the individual into custody and detain him, as permitted by G. S. 122-61, the clerk is authorized to issue an order to that effect directly to such peace officer.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

1 August 1972

Subject:	Licenses and Licensing; General Contractors; Installation of Industrial Equipment
Requested by:	Mr. Jimmy M. Wells, Jr. Secretary-Treasurer N. C. Licensing Board for Contractors
Question:	Is a company required to be licensed by the General Contracting Licensing Board under the provisions of Chapter 87, in order to bid on a "turn-key" Peak Shaving

Facility, consisting of a prefabricated building, air compressing equipment, gas blending equipment, and controls inside a prefabricated building as well as two large tanks and a self-contained propane vaporizer outside the building of which the total general contracting work involved is estimated to be \$10,900 out of the low bid of \$132,700?

Conclusion:

The erection of industrial equipment is specifically exempted from the licensing requirement of G. S. 87-1 and inasmuch as the estimated cost of the general contracting work is less than \$30,000, no general contractor's license is required of the low bidder.

The facts as indicated in a letter of July 17, 1972, from the Licensing Board for Contractors are that bids were advertised by the City of Lexington for a turn-key Peak Shaving Facility consisting of a prefabricated building and the installation of air compressing equipment, gas blending equipment, and controls in the building as well as the installation adjacent to the building of a self-contained propane vaporizer and two 30,000 gallon water capacity tanks which will be shop fabricated and placed on concrete foundations at the site. A piping and pumping station will also be installed.

The engineering consultant retained by the city estimates that out of the low bid of \$132,700, the general contracting work amounts to a total cost of \$10,900 which consists of the erection of a prefabricated metal building, construction of concrete supports for the building, concrete supports for water bath vaporizer and base for propane liquid pump, concrete supports for the two 30,000 gallon tanks, and grading for the tanks and yard piping. The remainder of the amount bid is attributable to the cost of the equipment and the cost of installing it.

The provisions of G. S. 87-1, the general contractor's licensing statute, is applicable to the construction of improvements in excess of \$30,000, but it specifically exempts the erection of the industrial

equipment. The amount included in the bid in excess of \$10,900 is attributable to the cost of installing industrial equipment. It is the opinion of this office that a general contractor's license is not required to bid on the installation of the facility, as the estimated cost of the improvements included in the bid for which a general contractor's license is required is less than \$30,000.

Robert Morgan, Attorney General
Eugene A. Smith,
Assistant Attorney General

- - -

3 August 1972

Subject: Motor Vehicles; Abandoned or Junked
Vehicles; Removal of Abandoned Vehicles
from Private Property

Requested by: Chief Thomas M. Dowdy
Kill Devil Hills Police Department

Question: Should city police have unauthorized
vehicles parked in privately owned motel
parking lots towed at request of motel
management?

Conclusion: City police should have unauthorized
vehicles parked in private motel parking
lots towed only if the city has enacted
proper ordinance pursuant to the
provisions of G. S. 160A-303 and the
owner or lessee of the motel has made
request for removal thereof in writing, or
the proper city official has declared such
vehicle to be a health or safety hazard.

G. S. 160A-303 in pertinent part reads:

"§ 160A-303. *Removal and disposal of junked and*

abandoned motor vehicles.—(a) A city may by ordinance prohibit the abandonment of motor vehicles on the public streets or on public or private property within the city, and may enforce any such ordinance by removing and disposing of junked or abandoned motor vehicles according to the procedures prescribed in this section.

(b) A motor vehicle is defined to include all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle. An abandoned motor vehicle is one that: . . .

(3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours; . . .

(c) Any junked or abandoned motor vehicle found to be in violation of an ordinance adopted under this section may be removed to a storage garage or area, *but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee has declared it to be a health or safety hazard. The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. . . .*" (Emphasis added.)

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

15 August 1972

Subject: Escheats; Statutes of Limitations
Inapplicable

Requested by: Honorable Edwin Gill
State Treasurer

Question: Does the expiration of any period of a
statute of limitations bar the State from
escheating property?

Conclusion: Statutes of limitations are not applicable
against the State in escheats.

The inquiry indicates that a certain petroleum company (hereinafter "the Company") has reported unclaimed dividends escheatable under G. S. 116A-4 and unclaimed salaries and wages escheatable under G. S. 116A-7(a) but denies that it is liable in escheat because of the expiration of three years.

The statutes of limitations cited are G. S. 1-52(1) not allowing an action after three years "upon a contract, obligation or liability arising out of a contract . . ." and G. S. 1-52(2) not allowing an action after three years "upon a liability created by statute, other than a penalty or forfeiture. . . ." We think it clear that no contract between the State and the Company is involved so subdivision (1) is inapplicable.

Further, it can be argued that escheat is in the nature of a forfeiture and, therefore, subdivision (2) is inapplicable; but since we conclude that statutes of limitations are not applicable against the State in escheats, this argument is unnecessary.

G. S. 1-30 provides:

"The limitations prescribed by law apply to civil actions brought in the name of the State, or for its benefit, in the same manner as to actions by or for the benefit of private parties."

While this statute was earlier adhered to by the Supreme Court regardless of the nature of the action (*Furman v. Timberlake*, 93 N. C. 66 (1885); *Tillery v. Lumber Company*, 172 N. C. 296 (1916)), the Court has in more recent cases distinguished between those functions of government which exercise sovereign power and those exercising proprietary functions.

In *Guilford County v. Hampton*, 224 N. C. 817 (1945), a suit to recover welfare payments was held to be proprietary, growing out of a contract, with the statute applicable. *City of Charlotte v. Kavanaugh*, 221 N. C. 259 (1942), was a holding to the same effect regarding special assessments although the Court said the statute would have been inapplicable if taxes had been involved.

The case of *City of Raleigh v. Mechanics and Farmers Bank*, 223 N. C. 286 (1943), also dealt with special assessments but the Court discussed the distinction between sovereign and other exercises of governmental power. The Court stated:

"While this ancient maxim has lost much of its vigor by the erosions of time, and by legislative enactment, it is still regarded as the expression of a sound principle of government applicable to actions to enforce the sovereign rights of the State. Notwithstanding the inclusive provisions of sec. 420 of the Consolidated Statutes that 'the limitations prescribed by law apply to civil actions brought in the name of the State, or for its benefit, in the same manner as to actions by or for the benefit of private parties' (*Threadgill v. Wadesboro*, 170 N. C., 641, 87 S. E., 521), it has been uniformly held that no statute of limitations runs against the State, unless it is expressly named therein. *Wilmington v. Cronly*, 122 N. C., 388, 30 S. E., 9; *Asheboro v. Morris*, *supra*. However, where in the statutes affording a remedy by a municipal corporation for enforcing the statutory lien of an assessment for public improvement a limitation of time is imposed upon the exercise of that power, manifestly the principle expressed in the quoted maxim is not controlling." (at p. 293)

This distinction was again made in *City of Reidsville v. Burton*, 269 N. C. 206 (1967). The Court stated:

"It is also generally held in this State and in the other States, except as provided otherwise by constitutional or statutory provisions, that the statute of limitations may be interposed as a defense to an action by a municipal corporation to enforce private, corporate or proprietary rights. *Charlotte v. Kavanaugh*, 221 N. C. 259, 20 S. E. 2d 97; 53 C.J.S., Limitation of Actions, § 17(a); 17 McQuillin, Municipal Corporations, § 49.06. See also 34 Am. Jur., Limitation of Actions, § 397." (at p. 210)

The exercise of the escheat power is unquestionably a sovereign function. From ancient times, all forfeited and unclaimed property went to the Crown and that part of common law has been maintained in North Carolina through Constitutional (now Article IX, Sec. 10) as well as statutory provisions.

Escheat statutes would have no meaning if the State was barred after three years since many items, including the dividends reported by the Company in this case, are not reportable until they remain unclaimed for three years.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

15 August 1972

Subject: Intoxicating Liquors; Solicitation of Sales;
Authority of State Board to Regulate
Solicitation of Sales of Alcoholic
Beverages, Beer and Wine

Requested by: Mr. James W. Pierce, Administrator
State Board of Alcoholic Control

Question: Does the State Board of Alcoholic Control have authority to restrict the activities of salesmen of alcoholic beverages, beer and wine, to the end that no solicitations may be made to clubs and individuals?

Conclusion: The State Board of Alcoholic Control does not have the authority to restrict the activities of salesmen of beer and wine in their contact with licensed retail outlets of beer and wine in this State. The State Board does have the authority to restrict the activities of salesmen of alcoholic beverages, beer and wine and prohibit solicitations of persons who are not licensed retail outlets in this State.

This opinion deals with the activities of salesmen employed or acting as agents for distilleries, breweries, and wineries and those persons who exercise functions as licensed wholesalers of beer, wine, and alcoholic beverages (those beverages with an alcoholic content of over 14%) in this State. It does not deal with the activities of persons who hold retail licenses in the State.

Under the State scheme of sale of intoxicating liquors in North Carolina salesmen may make sales of alcoholic beverages only for supply to the local board of alcoholic control store systems. Sales to any other person, firm or individual are absolutely prohibited.

The activities of salesmen for breweries and wineries and of salesmen of licensed wholesalers of beer and wine, however, are much more broad in that there are many retail outlets for beer and wine in the State and solicitations of sales from those outlets are not prohibited. Solicitations of sales of persons not licensed as retail outlets when the salesmen know that the product is being secured for the purchase of resale are unlawful since only licensed retailers may sell beer and wine in this State.

G. S. 18A-10 gives the State Board of Alcoholic Control regulatory authority over the advertising of intoxicating liquor, which includes

alcoholic beverages, beer and wine. G. S. 18A-15(3) empowers and mandates the State Board to fix retail prices of alcoholic beverages in local stores "at such levels as shall promote the temperate use of these beverages." Chapter 18A clearly indicates that alcoholic beverages (that is, beverages with an alcoholic content of more than 14% by volume) shall be tightly controlled in their sales, transportation and consumption. G. S. 18A-1 provides in part that the policy of the State is "that the sale, purchase, transportation, manufacture, and possession of intoxicating liquors shall be prohibited except as authorized in" Chapter 18A of the General Statutes.

With the tight restrictions in mind of alcoholic beverages and the fact that those may only be sold in stores and may be consumed on very limited premises, it is clear that if as a control measure the State Board of Alcoholic Control feels that it is necessary to restrict activities of salesmen of distilleries to contact with the proper officials with regard to supply of local stores, that is within the Board's power. Because the restrictions on beer and wine sales are not as tight with breweries, wineries and wholesalers as well as many retail outlets for both beer and wine licensed by the State Board, the State Board's authority with regard to restrictions placed on salesmen at the brewery-winery level or the wholesale level is not as broad as it is in the alcoholic beverage area.

The State Board of Alcoholic Control has the authority to prohibit salesmen employed by distilleries, breweries, wineries or salesmen employed by wholesalers from promoting the sale of alcoholic beverages, beer or wine by personal contact and soliciting of sales in connection with such solicitation of anyone except an authorized retail outlet in the State.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

15 August 1972

Subject: Health; Certificate of Need; Inapplicability to Facility Already Constructed but Not Fully Licensed or Used

Requested by: Dr. Jacob Koomen
State Health Director

Question: A skilled nursing home was constructed with approximately 170 beds. These beds were available for several years as nursing home beds but subsequently a license was obtained for approximately 40 to be used as psychiatric beds under a license issued by the Department of Mental Health. That license was dropped but for several years the facility has been licensed for only approximately 90 beds and part of the facility has remained vacant. May the facility now begin to utilize more than the licensed number of beds without first obtaining a certificate of need from the State Board of Health?

Conclusion: After obtaining a license, the facility may begin to utilize more than the licensed number of beds without first obtaining a certificate of need from the State Board of Health.

The inquiry indicates that an existing facility with space for approximately 170 beds is currently licensed for only 90 and does not use part of the present facility.

G. S. 90-291(b) provides in pertinent part:

"Any existing medical care facility need not apply for a certificate of need except when the facility proposes new construction, construction of additional bed capacity, or the conversion of existing bed

capacity to a different license category, except outpatient and emergency services. No certificate of need shall be required as a pre-condition to issuing or continuing a license to an existing medical facility in the absence of new construction, construction of additional bed capacity or conversion of existing bed capacity to a different license category for the existing medical care facility."

Clearly, if the facility were building a new building or a new wing, a certificate would be required. If the psychiatric beds were presently licensed or if the other space for beds was operated as a rest home, a certificate would be required. But the use of additional facilities already constructed and licensed at one time as nursing home beds does not require a certificate of need.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

15 August 1972

Subject: Licenses and Licensing; Day-Care Facilities;
Number of Children for Whom Facility
Licensed

Requested by: Mr. John Sokol, Director
Child Day-Care Licensing Board

Question: Assuming a day-care facility has three shifts
of 10 children each during a
twenty-four-hour period, should the
facility be licensed for 10 or 30 children?

Conclusion: The facility should be licensed for 10
children.

The Child Day-Care Licensing Board and mandatory licensing of

"day-care facilities" are provided for by Article 7 of Chapter 110 of the General Statutes, enacted by Chapter 803 of the 1971 Session Laws.

G. S. 110-86(2) provides that "day-care" is "any child-care arrangement under which a child less than 13 years of age receives care away from his own home by persons other than his parents, grandparents, guardians or full-time custodians on a regular basis for more than four hours per day where a payment, fee or grant is made for care." Subdivision (3) defines "day-care facility" as "day-care center or child-care arrangement that provides day care for more than five children and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit, except that the following are not included: public schools; nonpublic schools, whether or not accredited by the State Department of Public Instruction, which regularly and exclusively provide a course of grade school instruction to children who are of public school age; summer camps having children in full-time residence; summer day camps; and Bible schools normally conducted during vacation periods." A license must be obtained by a day-care facility and certain standards are mandatory.

Standards pertinent to the issue here are those in G. S. 110-91(6) which requires "no less than 25 square feet of floor space for *each child for which a day-care facility is licensed.*" (*Emphasis added.*) G. S. 110-91(7) contains specific provisions with regard to staff-children ratios which must be maintained. Neither of these standards would have much meaning if in the example given the figure of 30 children rather than 10 children were used.

Therefore, it is the opinion of this Office that a day-care facility should be licensed for the maximum number of children on the premises at any one time.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

29 August 1972

Subject: Health; Certificate of Need; Proper
Licensing Agency for Facility Which
Combines Hospitals, Nursing Homes and
Rest Home Care

Requested by: Mr. William S. Henderson
Deputy Secretary
Department of Human Resources

Question: Who is the proper agency to license and
issue a certificate of need for a facility
which proposes to combine a hospital,
nursing home and rest home?

Conclusion: The North Carolina Medical Care
Commission which licenses hospitals is the
proper agency to license and issue a
certificate of need for a facility which
combines hospital, nursing home and rest
home care.

A unique situation has arisen in one locality of the State where a new facility is being constructed adjacent to and physically connected to a hospital already licensed by the Medical Care Commission. It is proposed that a certain number of beds in the new facility will be allocated to nursing home care and a certain number of beds will be licensed as rest home beds. All of this will be operated by the hospital in conjunction with the hospital operation.

Article 13A of Chapter 31 of the General Statutes provides for licensing of hospitals by the Medical Care Commission. G. S. 130-9(e) provides for the licensing of nursing homes by the State Board of Health. Section 4 1/2 of Chapter 51 of the 1961 Session Laws provides that such regulation by the State Board of Health will not be applicable "to any facility operated by, under the auspices of, or in conjunction with any hospital required to be licensed by the North Carolina Medical Care Commission."

G. S. 108-4(10) and G. S. 108-77 authorize the State Department of Social Services to license rest homes, boarding homes and homes for the aged in this State. However, G. S. 108-77(d) provides that such licensing requirement will not apply to any institution which is "licensed by the State Board of Health under the provisions of G. S. 130-9(e)." Since the Medical Care Commission has authority not only to license hospitals but to license nursing homes in connection with hospitals, and since the standards for rest homes are less strict with regard to skilled care than those of nursing homes, it seems logical that, in connection with the operation of a hospital, the Medical Care Commission would have authority to license a rest home. The operation of the hospital, nursing home and rest home will be intimately inter-connected with the assumed transfer of persons from one category to the other as they progress or regress in their health status.

It is recommended that the Medical Care Commission adopt regulations for licensing of nursing homes and rest homes when that licensing is by the Commission in conjunction with the operation of a hospital and while these regulations must be independent of those of the Board of Health and the Department of Social Services, we recommend that the regulations of those two Departments for those kinds of facilities be used as guidance.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

31 August 1972

Subject:	Public Officers and Employees; Private Use by Physicians of State Facilities
Requested by:	Mr. Martin R. Peterson State Department of Correction
Question:	Whether space in the facilities of the State Department of Correction may be used by

staff physicians for private purposes?

Conclusion: The governing board of the State Department of Correction may establish and develop its own policy as to use of its facilities for private purposes.

The conclusion stated above is based upon an absence of any known prohibition against such use or specific authority granting such use. Therefore, in the absence of any statutory or case authority, it would appear to be a matter of policy of the governing board of the Department of Correction as to whether it wishes to grant such use and as to guidelines the board may establish for such use.

Because of the absence of specific authority in this area, it is suggested that enabling legislation be presented to the 1973 General Assembly by the Departments engaging in this practice.

Robert Morgan, Attorney General
Raymond W. Dew, Jr.,
Assistant Attorney General

- - -

31 August 1972

Subject: Municipalities; Intoxicating Liquors;
Authority to Regulate Consumption and
Display on Public or City-Owned Property

Requested by: Mr. Carl V. Venters
Jacksonville City Attorney

Question: Do municipalities have the authority to regulate or prohibit the consumption or display of intoxicating liquor on any public alley, road or street or on any city-owned property within the city limits?

Conclusion: Municipalities have authority to regulate or

prohibit the consumption or display of intoxicating liquor on any public alley, road or street or on any city-owned property within the city limits.

The inquiry indicates that the City of Jacksonville wishes to adopt an ordinance prohibiting the consumption or display of intoxicating liquor as defined in G. S. 18A-2 "on any public alley, road, street or highway within the City of Jacksonville or on any other property owned or controlled by the City of Jacksonville."

It has long been held in North Carolina that it is inherently within the police power of municipalities to regulate intoxicating liquor.

See, for example, *Paul v. Washington*, 134 N. C. 363, 47 S. E. 793 (1904).

Since the enactment of Chapter 18 of the General Statutes, recodified as Chapter 18A by the 1971 General Assembly, the authority of municipalities has been somewhat restricted. In effect, a doctrine of preemption by the State has been adopted but it has been restrictively applied to preempt municipal action only where the State regulation or prohibition occupies the field. Thus, in *Davis v. Charlotte*, 242 N. C. 670, (1955), the Supreme Court in an opinion by Justice (now Chief Justice) Bobbitt held that a Charlotte ordinance prohibiting a "car hop" sale of beer on a licensed premises was invalid. The Court's holding was that "The enforcement of the ordinance provision is restrained only as to sales made on the private property, that is, 'the premises' of the plaintiffs." (242 N. C. at p. 675) Thus, the trial court's order that the ordinance was valid as to sales on city streets was upheld.

Unless some specific provision of the General Statutes allows the consumption and/or display of intoxicating liquors on public and city-owned areas, the city may regulate those areas.

G. S. 18A-2(4) defines intoxicating liquor as including "alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt or fermented beverages, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one half of one

percent (1/2 of 1%) or more of alcohol by volume, which are fit for use for beverage purposes."

As to fortified wine or any other alcoholic beverage with an alcoholic content of more than 14%, consumption is outlawed on any public road, street or highway by G. S. 18A-30(5)a. The public display of such beverages at athletic contests and the consumption on unauthorized premises are made unlawful by G. S. 18A-30(5)b. and e. respectively.

G. S. 18A-35(a) provides:

"Except as otherwise provided in this Chapter, the purchase, transportation, and possession of malt beverages and unfortified wine by individuals 18 years of age or older for their own use are permitted without restriction or regulation."

This does not speak to the question of either consumption or display of malt beverages and unfortified wine.

We conclude, therefore, that the State has not preempted the area of consumption or display of intoxicating liquor on public streets or city-controlled property and this is, therefore, a proper subject for a municipal ordinance.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

5 September 1972

Subject: Education; Teachers; Teacher Tenure Act;
G. S. 115-142; Career Teachers

Requested by: Mr. W. F. Womble
Attorney for the Winston-Salem/Forsyth
County Board of Education

Question: To what extent, if any, is an otherwise qualified teacher entitled to credit for employment prior to July 1, 1972, in determining that teacher's eligibility for career teacher status?

Conclusion: Unless, at the end of the last school year preceding July 1, 1972, the teacher has had at least four consecutive years' employment with the school system considering him for tenure, or unless that teacher has had at least five consecutive years' employment with any of the public school systems of this State; that teacher is entitled to no credit for his previous employment in determining his eligibility for career teacher status.

The 1971 General Assembly completely rewrote G. S. 115-142 in enacting the Fair Employment Practices and Dismissals Act, informally referred to as the Teacher Tenure Act. The new Act was made effective on July 1, 1972. Chapter 883 of the Session Laws of 1971. It gives teachers certain rights and imposes upon school boards certain duties, none of which had heretofore existed. Because new rights are created and new duties imposed, the Act amounts to a substantial change in this State's substantive law, rather than in its procedural law. *Smith v. Mercer*, 276 N.C. 329, 172 S.E. 2d 489 (1970).

The present question arises because of a seeming conflict between two provisions contained in G. S. 115-142(c). The first provision of that subsection reads as follows:

"After a teacher has been employed by the same public school system in this State for a period of three consecutive years, the board of that system is required to vote upon that teacher's employment for the next succeeding year. If a majority of the board votes to reemploy the teacher, he or she becomes a career teacher."

The last two sentences of subsection (c) provide:

"All teachers employed by a public school system of this State at the time this section takes effect who, at the end of the last school year, will either have been employed by that school system (or a successor system if the system has been consolidated) for a total of four consecutive years or will have been employed by a public school system of this State for a total of five consecutive years shall automatically be career teachers if employed for a second year following July 1, 1972. All other teachers employed by a public school system of this State on July 1, 1972, shall be probationary teachers."

The first provision is the general rule and requires three consecutive years' employment before tenure can be acquired. Four or five years of experience prior to July 1, 1972, are necessary to meet the special requirements of the second provision. If the general rule is applied retroactively, the two provisions conflict. To illustrate the inconsistency, the inquiry poses an example:

"It would appear from the first sentence that any teacher who has been employed by the Winston-Salem/Forsyth County school system for a period of three consecutive years at the end of the 1972-73 school year would become a career teacher if reemployed for the '73-'74 school year. On the other hand, it appears from the fifth sentence of the subsection that only those teachers who have been employed for a total of four consecutive years in the Winston-Salem/Forsyth County school system or five consecutive years in any public school system in the state as of July 1, 1972, will automatically become career teachers if employed for the 1973-74 school year."

The short answer to the problem is that the inconsistency is only apparent and technically does not exist at all. What the statute presents is a general provision, namely that career teacher status attaches after three consecutive years of employment and reemployment for the fourth year, and a special provision for acquiring tenure when the Act initially becomes effective; that is that those with four years of previous employment in the same

school system prior to July 1, 1972, or five years' experience statewide will achieve tenure upon reemployment for the '73-'74 school year. In such situations of apparent conflict, the rule is plain: "Where there are two provisions in the statute, one of which is special or particular and the other general, which, if standing alone, would conflict with the particular provision, the special will be taken as intended to constitute an exception to the general provision, as the General Assembly is not to be presumed to have intended a conflict." *Davis v. Granite Corporation*, 259 N.C. 672, 676; 131 S.E. 2d 335 (1963). Under that principle, then, the general rule does not apply when the Act first takes effect. Initially, the special requirement of four or five years' employment is an exception to the general rule and must be complied with.

But in the present case, the special provision serves as more than merely an exception to the general rule that tenure follows three consecutive years' employment. Here, it also helps to make plain that the General Assembly intended no credit be given for employment prior to July 1, 1972, unless the previous employment amounts to at least four consecutive years with the same school system or five years statewide. If the statute were read to mean that employment prior to the effective date was to be counted in other cases, clear injustice would result.

For example, suppose that at the close of the 1971-72 school year a teacher has been employed by a particular school system for three consecutive years. He is reemployed for the year beginning in the fall of 1972, but does not sign his contract until after July 1, 1972, the effective date of the Act. If it were assumed that the teacher's three previous years should count toward tenure, that teacher would have tenure after signing his contract for the 1972-73 school year. However, a teacher with four or more years of experience could not possibly attain career teacher status until one year later under the specific provision of subsection (c). A construction such as that, resulting in injustice, will be avoided when the statute is susceptible to another construction. *Little v. Stevens*, 267 N.C. 328, 148 S.E. 2d 201 (1966). To avoid such a result, the Act must be construed to provide that no credit be given for previous experience unless that experience amounts to at least four or five years as set out.

Whether experience prior to July 1, 1972, is to be looked at in

awarding tenure is really a question of retroactivity: Is the general provision that tenure attaches following three consecutive years of employment to be given retroactive effect for purposes of accumulating the experience required? The North Carolina Supreme Court has held that a statute, such as the present one, amounting to a change in substantive law is to be applied prospectively only. *Smith v. Mercer, supra*. In that case, our court quoted with approval the standard rule on retroactivity as stated in *Monroe v. Chase*, 76 F. Supp. 278 (D.C. Ill., 1947), that a substantive change is not to be "given a retrospective application in the absence of clear language that the lawmakers so intended." 276 N.C. at 335.

Under the present statute, there is "clear language" that the legislature intended that the statute be applied retroactively in only two specifically named situations. They arise only when the teacher has had four previous, consecutive years of employment in the same school system or five years statewide. There is nothing to indicate that the General Assembly intended a retroactive application in any other situation. The indication, as shown by the palpable injustice that would result, is in fact to the contrary. The proper construction of the statute is, therefore, that it has no retrospective application except as specifically stated. Thus, previous employment not amounting to four years with the same school system or five years within the state will not be counted toward tenure.

There are not yet any North Carolina judicial constructions of the Act. However, a case from another jurisdiction, *Anderson v. Board of Education*, 390 Ill. 412, 61 N.E. 2d 562 (1945), is instructive.

In that case the Supreme Court of Illinois was confronted with a tenure statute similar to our own. The court held that a year's employment contracted for prior to the effective date of the tenure statute could not count toward fulfilling the required probationary period preceding an award of tenure. The teacher there argued that the period of probation should be given retrospective application. The court denied his claim and said, "We have examined the Teacher Tenure Law and cannot say that this statute contains 'clear language that will admit of no other construction' than that the legislature intended it to be retroactive." 61 N.E. 2d at 571 (citation omitted). The same construction is applicable to the North Carolina statute. See also, *Falligin v. School Dist.*, 54 Mont. 177, 169 P. 803 (1917).

The result is that teachers who have had at least four or five years' experience, as discussed, will achieve tenure upon reemployment for the 1973-74 school year. Other teachers, regardless of their previous experience will receive no credit toward tenure for employment prior to July 1, 1972, and will not be eligible for tenure before they are reemployed for the 1975-76 school year.

Robert Morgan, Attorney General
Charles A. Lloyd,
Associate Attorney

- - -

7 September 1972

Subject: Mental Health; Detention of Inebriates and Mentally Ill Persons; Authority of Clerk to Order Non-State Operated Hospitals to Involuntarily Accept Patients

Requested by: Dr. Granville G. Tolley
Assistant Commissioner of Mental Health

Question: Is a hospital other than a State hospital required to accept over its objection an alleged inebriate or mentally ill person ordered to be detained under the provisions of G. S. 122-61?

Conclusion: A hospital other than a State hospital is not required to accept over its objection an alleged inebriate or mentally ill person ordered to be detained under the provisions of G. S. 122-61.

In haec verba, the section under consideration is as follows:

"§ 122-61. *Detention of persons alleged to be mentally ill or inebriate and dangerous to themselves or others.*—If the affidavit filed in accordance with the

provisions of G. S. 122-60 states that the alleged mentally ill person or alleged inebriate is likely to endanger himself or others, he may be taken into custody and detained in his own home, in a private or general hospital, or in any other suitable facility as approved by the local health director for such detention, upon an order of the clerk of the court. He shall not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The Department of Mental Health shall make available to the clerk of court such medical services and transportation necessary to effect the detention deemed necessary.

The clerk shall expedite the hearing, and, if the alleged mentally ill person or alleged inebriate is found to be in need of hospitalization, the clerk shall expedite the transmission of this information to the proper State hospital so that the alleged mentally ill person or alleged inebriate can be admitted without any undue delay."

Literal reading of this statute makes it clear that the clerk of the superior court is charged with the responsibility for effecting a detention where necessary and in the manner most suitable for the alleged inebriate or mentally ill person concerned. This section delineates the types of places in which these individuals "may" be detained. It prescribes certain limitations upon the exercise of discretion by the clerk but contains no language indicating that the legislature intended to authorize the clerk to force a hospital (other than one operated by the State of North Carolina) to accept a patient of this type over its protest.

Deliberate consideration of the ramifications of the types of situations involved buttresses this conclusion. Obviously, the type of patient covered by this section presents unusual materiel and personnel problems for a hospital assuming custody. Adequate control over and treatment of these patients would require quantities and kinds of facilities, equipment, and skilled personnel not necessarily found in every hospital. Further, the very act of assuming the custody of inebriates and mentally ill persons raises a specter

of claims of malpractice (spurious or otherwise) and legal actions against the responsible institution which would cause concern to the average hospital. In view of the fertile field for litigation, which this type of treatment provides in the present day and time, it would be unconscionable, if not unconstitutional, to require a hospital to involuntarily assume these risks.

Finally, it would appear that the present thinking of the legislature is to insure development of health and medical facilities in a manner which is "orderly, timely, economical, and without unnecessary duplication." See G. S. 90-289. Thus, requiring all hospitals to be in a position to accept alleged inebriates and mentally ill persons if ordered to do so by the clerk, albeit involuntarily, would seemingly tend to foster unnecessary duplication of facilities in a fashion contrary to the intent of the legislature.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

12 September 1972

Subject:	Criminal Law and Procedure; Sentences; Judgment and Commitment; Correction, Department of; Prisons and Prisoners
Requested by:	Mr. Ben L. Baker Supervisor of Combined Records N. C. Department of Correction
Question:	Is an inmate committed to the North Carolina Department of Correction for "a period not to exceed twenty-five (25) years" serving a determinate sentence of twenty-five years or an indeterminate sentence of zero to twenty-five years imprisonment?

Conclusion: An inmate committed to the North Carolina Department of Correction for "a period not to exceed twenty-five (25) years" is serving a determinate sentence of twenty-five years.

Under G. S. 148-42, superior court judges in North Carolina "are authorized in their discretion in sentencing prisoners to imprisonment to commit the prisoner to the custody of the Commissioner of Correction for a minimum and maximum term." "An indeterminate sentence differs from a determinate sentence only in that the former imposes a minimum term." 24B C.J.S. Criminal Law § 1993(a). An indeterminate sentence must state a minimum term for which the prisoner is to be confined.

"Where the court exercises its discretion to fix minimum and maximum limits, . . . they must be definitely fixed. . . ." 24 C.J.S. Criminal Law § 1582(a). When an inmate is committed for "a period not to exceed twenty-five (25) years," there is no definite minimum term of imprisonment fixed by the sentencing court. The prisoner has not been sentenced to a minimum and maximum term of imprisonment as required by statute. Therefore, the prisoner would be serving a determinate sentence of twenty-five years imprisonment.

Robert Morgan, Attorney General
Edward L. Eatman, Jr.,
Assistant Attorney General

- - -

13 September 1972

Subject: Courts; District Courts; Juveniles; Criminal Offenses; Commitments to the Board of Youth Development When the Juvenile is Over 16 Years of Age

Requested by: Honorable B. Gordon Gentry
District Court Judge
18th Judicial District

Question:

When a defendant who is 16 or more years old but less than 18 years old is found guilty of a criminal offense in district court, and no court order has ever been entered previously concerning the defendant, is it proper for the district court judge to enter an order placing the defendant under a sentence suspended upon condition that the child be placed in a school by the Board of Youth Development?

Conclusion:

When a defendant who is 16 or more years old but less than 18 years old is found guilty of a criminal offense in district court, and no court order has ever been entered previously concerning the defendant, it is not proper for the district court judge to enter an order placing the defendant under a sentence suspended upon condition that the child be placed in a school by the Board of Youth Development.

Pertinent excerpts from the General Statutes are as follows:

"§7A-279. *Juvenile jurisdiction.*— The court shall have exclusive, original jurisdiction over any case involving a child who resides in or is found in the district and who is alleged to be delinquent, undisciplined, dependent or neglected, . . ."

"§7A-278. *Definitions.*— . . .(1) 'Child' is any person who has not reached his 16th birthday."

"§7A-286. *Disposition.*— . . .In any case where the court adjudicates the child to be delinquent, undisciplined, dependent or neglected, the jurisdiction of the court to modify any order of disposition made in the case shall continue during the minority of the child . . ."

"§134-11. *Who may be committed.*— The schools, institutions and agencies enumerated, and others that now exist or may be hereafter established, shall accept and train all delinquent children of all races and creeds under the age of 18 as may be committed to the State Department of Youth Development by the judges of the General Court of Justice to which assigned or by judges of other courts having jurisdiction . . ."

G. S. 134-11 gives the Board of Youth Development a mandate to accept and train *delinquent children*. Although G. S. 7A-286, quoted in part above, gives the court authority to modify any order concerning a *child* (defined in G. S. 7A-278 as a person under 16 years of age) during minority, neither G. S. 7A-286 nor G. S. 134-11 provides authority for commitment by the district court and acceptance by the Board of Youth Development of a *person over 16 years of age* who is found *guilty of a criminal offense* and concerning whom no previous order has been entered by the court.

It is noted, however, that G. S. 134-13 provides that "The Governor of the State may by order transfer any person under the age of 18 years from any jail or prison in this State to one of the institutions, schools or agencies of correction."

Robert Morgan, Attorney General
Robert S. Weathers,
Assistant Attorney General

- - -

15 September 1972

Subject: Motor Vehicles; Driving Under the
Influence; Plea Bargaining; Careless and
Reckless Driving

Requested by: Honorable Seavy A. Carroll
District Court Judge
Twelfth Judicial District

Questions:

Where a defendant is charged with driving under the influence, there being no other charge against the defendant, and the solicitor and counsel for defendant negotiate a plea resulting in defendant pleading guilty to careless and reckless driving:

(1) Is the judge proceeding properly if the judge allows the solicitor to amend the original charge, so as to charge the defendant with careless and reckless driving?

(2) In such a negotiated plea, is the record sufficient if it merely shows a second count (added) "Careless and Reckless Driving", in the handwriting of the solicitor, and the additional judgment entries, and the solicitor takes a nol pros as to the charge of drunken driving?

Conclusions:

(1) No.

(2) No.

In regard to Conclusion (1), the offense of careless and reckless driving (G. S. 20-140) is not a lesser included offense embraced by the misdemeanor of driving under the influence (G. S. 20-138). The two are "separate and distinct violations of law", although they may be so related to the same transaction as to permit being charged as separate counts in the same bill of indictment. *State v. Fields*, 221 N.C. 182 (1942).

Due to the holding in *State v. Fields, supra*, it would appear that the better procedure to follow would be to add a new charge of careless and reckless driving and dispose of this charge prior to nol prossing the charge of driving while under the influence of intoxicants. Since the defendant can appeal from the careless and reckless conviction in the district court to the superior court for a trial de novo, all of the elements necessary to convict for careless

and reckless driving should be present before a negotiated plea is accepted. Driving while drinking alone will not sustain a charge of careless and reckless driving.

In regard to Conclusion (2), the following premise must be taken into consideration:

"There can be no trial, conviction, or punishment for a crime without a formal and sufficient accusation. In the absence of an accusation, the court acquires no jurisdiction whatever, and if it assumes jurisdiction, a trial and conviction are a nullity." *State v. McClure*, 267 N.C. 212 (at 215) (1966).

G. S. 20-140(a) and (b) provide:

"(a) Any person who drives any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving."

Taking into consideration the holding in *State v. McClure, supra*, and the provisions of G. S. 20-140(a) and (b), the adding of what purports to be a second count to the warrant by the solicitor by simply writing on the warrant "careless and reckless driving" would not meet the requirements. A new warrant should be issued in proper form and fully executed, charging careless and reckless driving.

To be procedurally correct, it would appear that the charge of careless and reckless driving must be in sufficient detail to charge the offense. See *State v. Floyd*, 15 N.C. App. _____ (1972).

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

13 September 1972

Subject: Counties; Recreation Districts; Article 28,
Chapter 153 (G. S. 153-368 *et seq.*)

Requested by: Mr. W. B. Trevorrow
Guilford County Assistant Attorney

Questions: (1) Under the provisions of G. S. 153-368 *et seq.*, is a board of county commissioners required to call for a referendum upon the presentation of a petition in proper form irrespective of the proposed size of the recreation district?

(2) If a board of county commissioners is required to call for such a referendum, prior to calling such referendum, may the board require modification and enlargement of the proposed district and if the petitioners fail to enlarge the district, may the board itself enlarge the district and require the additional signers necessary to obtain the signatures of 15% of the resident freeholders living in the enlarged district?

(3) Must a person, in order to be a qualified voter, under G. S. 153-369, live in the proposed district?

(4) If the majority of the qualified voters voting at such a referendum favor the levying and collecting of a tax in the district, is a board of county commissioners required to levy and collect the tax if the board finds that the tax raised by the levying of the maximum amount is insufficient to adequately provide recreation for this district?

Conclusions: (1) A board of county commissioners is

required to call for a referendum under the provisions of Article 28 of Chapter 153 when the petition is in proper form irrespective of the size of the proposed recreation district.

(2) A board of commissioners has no authority to require a modification or enlargement of the proposed recreation district and the board may not enlarge the district itself.

(3) Yes.

(4) The board is required to levy the tax, even if it makes a determination that the tax will not be sufficient to support a recreation district.

In a letter dated August 17, it was stated that the Board of Commissioners of Guilford County has received a petition, which petition appears to be in proper form, requesting the Board of County Commissioners to call for an election on the question of whether or not to collect a special tax on all taxable property in a proposed recreation district, said tax not to exceed 15 cents per \$100 valuation of property. The proposed district is extremely small and the Board estimates that the tax revenue raised at 15 cents per \$100 valuation would approximate \$200 - \$300 per year.

G. S. 153-368 says, in part, upon the petition of 15% of the resident freeholders living in an area lying outside the corporate limits of any city or town "which area is described in the petition and designated as ' (here insert name) Recreation District,' the board of county commissioners of the county *shall call an election in said district* " (*Emphasis added.*) This statute is mandatory in its terms and does not confer on a board of county commissioners any discretionary authority to reject a petition when it is presented to them proper in form. Neither is there any discretionary authority given a board of county commissioners to enlarge a district or to require that additional persons sign a petition for a recreation district.

According to the terms of G. S. 153-369, a person must live in the proposed district in order to vote in the election. This statute provides, in part, "for the election so called as provided in G. S. 153-368, the board of commissioners of the county shall provide one or more polling places in said district, shall provide for a registrar or registrars and judges of election at said voting places, *shall provide for the registration of all qualified voters living in said district,* " (Emphasis added.)

The statutes do not give the Board of County Commissioners any authority to refuse to levy and collect the tax for a recreation district if a majority of the qualified voters voting in the referendum approve the levying and collecting of the tax. G. S. 153-371 provides that if a majority of those voting in such an election favor the levying of such a tax, ". . . then the board of county commissioners is authorized and directed to levy and collect a tax in said district"

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

13 September 1972

Subject: Criminal Law and Procedure; Law
Enforcement; Legality of Law
Enforcement Officers From Out of
Jurisdiction Serving as Undercover Agents
in Another Jurisdiction

Requested by: Mr. Dan E. Gilbert
Assistant Supervisor
Organized Crime Control
State Bureau of Investigation

Questions: (1) What is the legality of law enforcement
officers from out of the jurisdiction serving
as undercover agents in another
jurisdiction?

(2) Are these officers covered by workmen's compensation under these circumstances?

(3) May these officers lawfully make arrests under these circumstances?

Conclusions:

(1) The legality of these officers serving as undercover agents depends upon the political subdivisions, both requesting and sending, complying with G. S. 160A-288 which requires that there be an emergency and that there be an agreement spread on the minutes of the requesting and sending governing bodies. Any law enforcement officer participating in the control of a state of emergency in which the Governor is exercising control under G. S. 14-288.15 shall have the same power and authority as a sheriff throughout the county to which he is assigned.

The Alcoholic Beverage Control Act provides in G. S. 18A-20(a) that "(a)ny law enforcement officer appointed by a county (ABC) board and any other peace officer is hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such county and assist in suppressing violations of the *liquor law* therein, and while so acting shall have such powers of a peace officer as are granted to him in his own county and be entitled to all of the protection provided for said officer while acting in his own county".

(2) No, unless both the requesting and sending political subdivisions have complied with G. S. 160A-288 requiring

that there be an emergency and that the agreement by the requesting and sending political subdivisions be spread on the minutes of the governing bodies, or unless the officers are serving pursuant to G. S. 14-288.15 or G. S. 18A-20(a).

(3) Yes, if both jurisdictions have complied with G. S. 160A-288, then these undercover agents could lawfully make arrests since they would be vested with the same authority as the law enforcement officers of the requesting political subdivision, or if the officers are serving pursuant to G. S. 14-288.15 or G. S. 18A-20(a).

G. S. 160A-288 provides that any political subdivision in this State may, upon request, send law enforcement officers to any other political subdivision to assist in cases of emergency. A complete record of the request and the names of the officers sent must be recorded in the minutes of the next regular or special meeting of the governing bodies of both the requesting and sending political subdivisions. This assistance can only be rendered in emergencies and no political subdivision may send law enforcement officers unless the requesting and sending political subdivisions have a prior agreement to do so, which agreement is spread upon the minutes of both governing bodies and duly signed. Also, G. S. 14-288.15(c)(2) provides the authority of the Governor to exercise control in emergency situations. Any law enforcement officer participating in the control of a state of emergency in which the Governor is exercising control under G. S. 14-288.15 shall have the same power and authority as a sheriff throughout the county to which he is assigned. The Alcoholic Beverage Control Act provides in G. S. 18A-20(a) that "(a)ny law enforcement officer appointed by a county (ABC) board and any other peace officer is hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such county and assist in suppressing violations of the *liquor law* therein, and while so acting shall have such powers of a peace officer as are granted to him in his own county and be entitled to all of the protection provided for said

officer while acting in his own county".

When officers are sent pursuant to G. S. 160A-288 these law enforcement officers are extended the jurisdiction, authority, rights, privileges and immunities, including coverage under workmen's compensation laws, which they have in the sending political subdivision. If the officers are serving pursuant to G. S. 14-288.15 or G. S. 18A-20(a), then likewise they would be covered by workmen's compensation.

Unless the political subdivisions have complied with G. S. 160A-288, or unless the officers are serving pursuant to G. S. 14-288.15 or G. S. 18A-20(a), undercover agents from another political subdivision would not have any arrest powers other than those vested in any citizen at common law. This would mean these undercover agents could arrest for felonies that were committed in their presence and for misdemeanors which constituted breaches of the peace. This does not otherwise prohibit these undercover agents from being witnesses as to crimes that they witnessed.

Robert Morgan, Attorney General
Dale P. Johnson,
Assistant Attorney General

- - -

14 September 1972

Subject:	Elections; Registration Commissioners; Time of Appointment
Requested by:	Mr. Alex K. Brock, Director State Board of Elections
Question:	May county boards of elections appoint special registration commissioners at any time other than Monday after the seventh Saturday before the primary?

Conclusion:

No. Construing the various statutes together, it appears that special registration commissioners should be appointed at the same time as the regular precinct official, to-wit, on Monday after the seventh Saturday before the primary.

G. S. 163-41 authorizes counties to appoint special registration commissioners, in addition to regular registrars, and such persons shall serve for two years subject to be terminated at any time without cause.

The chairman of each political party has the right to recommend registered voters of the county for appointment. If such recommendation is received by the county board before the seventh Saturday before the primary, the board may appoint from the names recommended but is not required to do so.

G. S. 163-31 requires the county board of elections to meet on Monday after the seventh Saturday before the primary election to appoint precinct registrars and judges.

G. S. 163-41(c) requires the county board immediately after appointing registrars, judges, and special registration commissioners, as herein provided, to publish the names of the persons appointed in some newspaper having general circulation in the county, or by posting the names at the courthouse door, and the board shall notify each person by letter or by having notice of his appointment served upon him by the sheriff.

The procedure for appointing special registration commissioners is the same as appointments of registrars and judges. Thus, we conclude that it is the legislative intent for registration commissioners to be appointed at the same time as regular registrars and judges are appointed under G. S. 163-31.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

19 September 1972

Subject: Social Services; Day Care Facilities;
Licensing; Facility With Morning
Kindergarten and a Lesser Number of
Children for All Day Care

Requested by: Mr. John Sokol
Director
N. C. State Day Care Licensing Board

Question: In the case of a facility which has over 100
children in a morning kindergarten,
typically four hours or less, but only 25
of those children remain all day, for what
number is that facility licensed?

Conclusion: The facility should be licensed for the
greatest number of children on the
premises regularly at any one time-in the
example given, the number of children over
100 regularly attending during the
morning.

The threshold inquiry for any operation which applies for licensing to the Child Day Care Licensing Board is whether it is a day-care facility or day-care plan. If it is a day-care facility as defined in G. S. 110-86(3) - that is, it provides day care for more than five children for more than 4 hours a day - a license is required. If it does not have that substantial a day-care load, it may be a day-care plan as defined in G. S. 110-86(4), in which case it need only register with the Board. In the example posited, the facility has more than five children for more than four hours a day and thus it is a day-care facility. Once that determination is reached, in determining the number for which the facility is licensed, one should inquire as to the maximum number of children regularly on the premises at any one time. There is a tolerance provided for children cared for *after school* and absenteeism (G. S. 110-91(7)) but this is not applicable in the example given. Therefore, the facility should be licensed for the number over 100 who are on the premises in the morning and the fact that that is for four hours or less is not

determinative of the number for which the facility should be licensed.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

19 September 1972

Subject: Oaths; Attorneys at Law; Who May Swear
in Attorneys to Practice Law; G. S. 84-1,
G. S. 11-7.1

Requested by: Honorable J. W. H. Roberts
Chief District Judge
Third Judicial District

Question: Does a district court judge or chief district
court judge have the authority to
administer the oath to a new attorney to
qualify the attorney to practice law in
North Carolina?

Conclusion: No.

G. S. 11-7.1 provides that except as otherwise specifically required by statute, an oath of office may be administered by a judge, justice, magistrate, clerk, assistant clerk or deputy clerk of the General Court of Justice. However, G. S. 84-1 provides that attorneys, before they shall be admitted to practice law, shall, in open court, before a Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court, take the oath prescribed for attorneys. Therefore G. S. 84-1 would be controlling over G. S. 11-7.1 and only a Justice of the Supreme Court, a Judge of the Court of Appeals or a Judge of Superior Court may administer the oath for an attorney to be admitted to practice law in North Carolina.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

19 September 1972

Subject: Youthful Offender; Paroles, Board of;
Correction, Commissioner of; Prisons and
Prisoners

Requested by: Mr. George W. Randall
Secretary
Dept. of Social Rehabilitation and Control

Question: Whether the Board of Paroles may release
a committed youthful offender upon
conditional release under supervision
without any recommendation of the
Commissioner of Correction?

Conclusion: The Board of Paroles may not release a
committed youthful offender upon
conditional release under supervision
without the recommendation of the
Commissioner of Correction.

A youthful offender may be committed to the custody of the Commissioner of Correction for treatment and supervision pursuant to Article 3A, Chapter 148, General Statutes of North Carolina. G. S. 148-49.4. "When, in the judgment of the Commissioner of Correction, a committed youthful offender is ready for conditional release under supervision, the Commissioner shall so report to the Board of Paroles with his recommendation." G. S. 148-49.8(a). The Commissioner of Correction, under whose custody the youthful offender is placed, is therefore required to report his recommendations to the Board of Paroles when the Commissioner determines in his judgment that the committed youthful offender is ready for conditional release. "The Board of Paroles may at any

time after reasonable notice to the Commissioner of Correction release conditionally under supervision a committed youthful offender." G. S. 148-49.8(a). This statute requires that any decision by the Board of Paroles to release a committed youthful offender conditionally under supervision must be founded upon a favorable recommendation by the Commissioner of Correction.

Robert Morgan, Attorney General
Edward L. Eatman, Jr.,
Assistant Attorney General

- - -

26 September 1972

Subject: Motor Vehicles; Drivers' Licenses;
Reduction of Points for Successful
Completion of Driver Improvement Clinic;
G. S. 20-16(c)

Requested by: Mr. Robert D. Warren, Director
Drivers License Division
Department of Motor Vehicles

Question: Since the three points to be deducted from an individual's driving license record upon completion of the driver improvement clinic provided for in G. S. 20-16(c) are not designated, may the Department of Motor Vehicles deduct the points assigned for the most recent conviction?

Conclusion: Yes. G. S. 20-16(c) reads in part:

" . . . The Department may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period

of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Department and, *upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record;*" (Emphasis added.)

The obvious intent of the General Assembly was to encourage attendance at a driver improvement clinic by drivers who had been charged with as many as seven driver's license points, since three points are required to be deducted upon successful completion of such clinic.

Since points have dropped three years from date of entry, if a person charged with seven points had three points which had been charged 32 months prior to being charged with a four-point violation, bringing the total point count to seven, there would be little incentive to attend a driver improvement clinic if the first three points are to be deducted as they would automatically be dropped in four months without attending the driver improvement clinic.

Though G. S. 20-16(c) does not specify which points charged to an individual driver's license record are to be deducted upon completion of the driver improvement clinic, it would appear that the Department should take such action as would encourage the attendance at the clinic and promote highway safety.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

3 October 1972

Subject: Municipalities; Streets and Highways;
"Powell Bill" Funds: Expenditure on State
Highway System Streets

Requested By: Honorable Donald R. Kincaid
North Carolina House of
Representatives

Question: May "Powell Bill" funds be used to
improve streets on the State highway
system?

Conclusion: No, the portion of gasoline tax revenues
allocated to municipalities under the
provisions of G.S. 136-41.1 and known as
"Powell Bill" funds, may not be used to
improve streets on the State highway
system as they are the responsibility of the
State Highway Commission, with the
exception that "Powell Bill" funds may be
used to pay for the cost of certain
improvements to streets on the State
highway system for which the municipality
is specifically authorized to make and to
expend municipal funds, including the
municipality's share of the cost of
acquisition of right of way, curbing and
gutter, drainage, adding lanes for parking,
and any other improvement specifically
authorized to be made provided that the
use is also authorized under G.S. 136-41.3

G.S. 136-41.3 indicates the purposes for which the "Powell Bill"
funds may be expended by the municipalities. That section provides
that the "funds allocated to cities and towns under the provisions
of G.S. 136-41.1 shall be expended by the cities and towns *only
for the purpose* of maintaining, repairing, constructing,
reconstructing or widening *of any street or public thoroughfare*
including bridges, drainage, curbing and gutter and other necessary
appurtenances within the corporate limits of the municipality, or
for meeting the municipality's proportionate share of assessments
levied for such purposes." This section contains no provision which
limits the expenditure of "Powell Bill" funds to streets on the
municipal system. However, municipalities are not responsible for
the construction, repair, and maintenance of streets inside the

corporate limits of municipalities which are on the State highway system. G.S. 136-66.1; G.S. 160A-297(a); *Milner Hotel v. Raleigh*, 271 NC 224. Therefore municipal funds may not be expended for improvements to the State highway system streets in the absence of specific authority.

G.S. 136-66.3 authorizes the State Highway Commission and the municipality to reach a cost-sharing agreement for the acquisition of right of way for highways on the State highway system inside municipalities. G.S. 160A-297(b) provides that a city may at its own expense widen any street or bridge under the authority and control of the State Highway Commission, subject to the Commission's engineering and design specifications. G.S. 136-66.2 authorizes municipalities to expend municipal funds for the purpose of making the following improvements on streets within its corporate limits which form a part of the State highway system: (a) construction of curbing and guttering; (b) adding of lanes for automobile parking; (c) bearing that portion of the cost of constructing street drainage facilities which may, by reasonable engineering estimates, be attributable to the amount of surface water collected on and flowing from municipal streets which do not form a part of the State highway system; (d) constructing sidewalks; *provided that no part of the funds allocated to the municipalities by G.S. 136-41.1 may be expended for sidewalk purposes.*

As the State Highway Commission has responsibility for the maintenance and improvement of the streets on the State highway system, this Office is of the opinion that "Powell Bill" funds may not be expended to improve State highway system streets except in certain instances when municipalities are specifically authorized to expend municipal funds for that purpose, provided that the use shall be for one of the purposes enumerated in G.S. 136-41.3. Although municipal funds may be expended for sidewalk improvements in connection with State highway system streets, the use of "Powell Bill" funds for that purpose is not included in G.S. 136-41.3 and the use of "Powell Bill" funds for that purpose is also specifically prohibited by G.S. 136-66.2(d). This opinion is in accord with other opinions of this Office that "Powell Bill" funds may be expended for specific improvements on the State highway system streets, including the acquisition of right of way, curbing and gutter, drainage, and the widening of traffic lanes for parking.

The purposes enumerated herein for which municipalities may expend "Powell Bill" funds in connection with improvements on the State highway system streets in municipalities is not intended to be an all-inclusive list.

Robert Morgan, Attorney General
Eugene A. Smith,
Assistant Attorney General

- - -

5 October 1972

Subject: Social Services; Juveniles; Wards of the State; Effect of Placement of Custody by Judge of Juvenile Court

Requested by: Mr. F. R. Justice
Acting State Budget Officer
N. C. Department of Administration

Question: Should children who have been placed by the courts in the custody of a private child-caring institution or in the custody of the superintendent of a private child-caring institution be considered wards of the State for the purposes of Resolution 91, ratified by the General Assembly of North Carolina, 1971 Session?

Conclusion: Children who have been placed by the court in the custody of a private child-caring institution or in the custody of the superintendent of a private child-caring institution should be considered wards of the State for the purposes of Resolution 91, ratified by the General Assembly of North Carolina, 1971 Session.

Resolution 91, *aliunde* portions not pertinent to this problem, reads as follows:

"Whereas, the State of North Carolina relies on private child-caring institutions to provide custodial care for children who would otherwise be wards of the State; and

"Whereas, the grants-in-aid provided by the State of North Carolina to these private child-caring institutions have not necessarily been granted on an equitable basis:

"Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

"Section 1. The Department of Social Services shall develop a formula for the allocation of State funds to private child-caring institutions currently receiving State grants-in-aid, taking into consideration the needs of each institution and the percentage of children in each institution who otherwise would become wards of, and continuing responsibilities of the State. Said formula shall be submitted to the Advisory Budget Commission on or before September 1, 1971, for approval.

"Sec. 2. Upon approval by the Advisory Budget Commission, said formula shall be circulated to all private child-caring institutions receiving State grants-in-aid in order that they may consider same in preparing their budgets for the years beginning July 1, 1973.

"Sec. 3. The formula approved by the Advisory Budget Commission shall be used to appropriate State funds to all private child-caring institutions receiving grants-in-aid for the years beginning July 1, 1973."

It appears that, in fulfilling the obligations placed upon it by Resolution 91, the Department of Social Services has prepared a formula which considers only those children placed in private child-caring institutions by county departments of social services as

being wards of the State. Additionally, it appears that this formula has been approved by the Advisory Budget Commission. The acting State Budget Officer has requested an opinion from this Office as to the compatibility of such formula with the resolution as ratified by the General Assembly.

Synthesization of the entire resolution discloses that the answer to the question turns on the intent of the legislature in limiting the aid provided for to those children "who otherwise would become wards of, and continuing responsibilities of the State."

It may safely be said that the word "wards" is a term of common parlance rather than a technical one. Thus we may look to the dictionary in order to determine the sense of the legislators who acceded to this resolution.

Webster's Seventh New Collegiate Dictionary, (1972), contains the following illuminating interpretation of this key word:

" . . . (A) person who by reason of incapacity (as minority or lunacy) is under the protection of a court either directly or through a guardian appointed by the court . . . a person or body of persons under the protection or tutelage of a government " Id., at p. 1003.

With the terminology used by the legislature so circumscribed, the conclusion stated above is mandated by the provisions of G.S. 7A-286 which vest in a judge exercising juvenile jurisdiction the authority to

" . . . select the disposition which provides for the protection, treatment, rehabilitation or correction of the child after considering the factual evidence, the needs of the child, and the available resources, as may be appropriate in each case."

Thereafter, in the same section of the General Statutes, the judge is provided with various alternatives for disposition of cases coming before him. In addition to placement of children in the custody of the county department of social services, among other

alternatives, the judge is given the option to:

"Place the child in the custody of a parent, relative, private agency offering placement services, or *some other suitable person* " (*Emphasis supplied.*)

Thus, in view of this statutory authorization, it is manifest that the General Assembly intended that children placed in the custody of a private child-caring institution or in the custody of the superintendent of such an institution should fall in the category of "wards of the State" within the context of Resolution 91.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

11 October 1972

Subject:	Municipalities; Streets and Highways; "Powell Bill" Funds; Expenditure for Sidewalks
Requested by:	Mr. Walter J. Cashwell, Jr. Gibson Town Attorney
Question:	Does the term "necessary appurtenances" found in G.S. 136-41.3 include public sidewalks?
Conclusion:	No. The term "necessary appurtenances" to streets or public thoroughfares used in G.S. 136-41.3, which provides the purposes for which expenditures may be made from the portion of the gasoline tax revenues allocated to municipalities and referred to as "Powell Bill" funds, does not include sidewalks. "Powell Bill" funds are specifically prohibited by the provisions of

G.S. 136-66.1(4) from being spent for sidewalk purposes. 41 N.C.A.G. 391.

Robert Morgan, Attorney General
Eugene A. Smith,
Assistant Attorney General

- - -

11 October 1972

Subject: Criminal Law and Procedure; Sentencing; Presentence Report; Use of Prior Convictions; Probation and Probation Officers

Requested by: Mr. W. H. Gibson, Director
Probation Commission
Department of Social Rehabilitation & Control

Question: Should a probation officer in North Carolina, when preparing a presentence investigation report, make reference to previous convictions that had occurred when the defendant was not represented by counsel?

Conclusion: A probation officer in North Carolina, when preparing a presentence investigation report, should not make reference to previous convictions that occurred when the defendant was not represented by counsel.

In the recent case of *United States v. Tucker*, 404 U.S. 443 (1972), the Supreme Court of the United States held that a convicted criminal defendant is entitled to be resentenced where the trial judge, in determining what sentence to impose on him, gave attention to two previous felony convictions which were constitutionally invalid

because he was then unrepresented by counsel, was not advised of his right to counsel, and did not intelligently waive his right to counsel. The Supreme Court disapproved of a trial judge considering, before imposing sentence, previous invalid convictions of a criminal defendant.

When a probation officer is called upon by the court to make a presentence investigation report, the officer should avoid making reference to previous convictions when the defendant was not then represented by counsel. Prior to the decision in *Gideon v. Wainwright*, 372 U.S. 335 (March 18, 1963), the Supreme Court had not required the appointment of counsel for indigent defendants when charged with a felonious criminal offense. Since this decision has been applied retroactively, as a practical matter no reference should be made to felony convictions obtained prior to the decision in *Gideon* unless there is evidence that the defendant was represented by counsel or effectively waived the same.

Recently, the Supreme Court in *Argersinger v. Hamlin*, 407 U.S. 25 (June 12, 1972), held that an indigent criminal defendant was entitled to representation by court-appointed counsel before he could be sentenced to any term of imprisonment. Therefore we advise against the use in the presentence report of any misdemeanor convictions prior to the *Argersinger* decision unless, as stated above, there is evidence that the defendant was represented by counsel or effectively waived the same. Of course, this requirement that a criminal defendant be represented by court-appointed counsel when indigent applies only to cases when the defendant is given a term of imprisonment, and would not apply to a case which is disposed of other than by the imposition of a term of imprisonment.

It is therefore recommended that a probation officer in preparing a presentence investigation report only make reference to previous felony convictions occurring after March 18, 1963, and to previous misdemeanor convictions occurring after June 12, 1972, when a term of imprisonment was imposed, unless the defendant had been represented by counsel or had waived representation. The probation officer should obtain this essential information when records are readily available for his consideration, when ordered by the court, or when necessary for the judge's consideration in the particular case.

Robert Morgan, Attorney General
Edward L. Eatman, Jr.,
Assistant Attorney General

- - -

11 October 1972

Subject: State Departments, Institutions and
Agencies; Publications; Free Distribution
on Request to Statutory List of
Institutions; G.S. 147-50

Requested by: Mr. James H. Thompson
Director
Walter Clinton Judson Library
University of North Carolina at Greensboro

Question: (1) Whether the University of North
Carolina at Greensboro Library is entitled
to receive on request at no cost two copies
of any printed report, bulletin, map or
other publication issued by a State
department, institution or agency issuing
the publication requested.

(2) Whether publications issued by the
Department of Justice, the Department of
Economic and Natural Resources, the
Department of Social Services, the
Department of Conservation and
Development, the Department of Art,
Culture and History, the Department of
Public Instruction and the Board of Higher
Education are exempt from the
requirement of G.S. 147-50 that the
printed reports, bulletins, maps or other
publications of State departments,
institutions or agencies be furnished at no
cost upon request to the University of

North Carolina at Greensboro Library.

Conclusion:

(1) Yes, the University of North Carolina at Greensboro Library is entitled to receive on request at no cost two copies of any printed report, bulletin, map or other publication issued by a State department, institution or agency issuing the publication requested.

(2) No, publications issued by the Department of Justice, the Department of Economic and Natural Resources, the Department of Social Services, the Department of Conservation and Development, the Department of Art, Culture and History, the Department of Public Instruction and the Board of Higher Education are not exempt from the requirement of G.S. 147-50.

The statute in question, G.S. 147-50, is set out verbatim:

"§ 147-50. *Publications of State officials and department heads furnished to certain institutions, agencies, etc.*—Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies
University of North Carolina at Charlotte	2 copies
University of North Carolina at Greensboro	2 copies
North Carolina State University at Raleigh	2 copies
East Carolina University at Greenville	2 copies
Duke University	25 copies
Wake Forest College	2 copies
Davidson College	2 copies
North Carolina Supreme Court Library	2 copies

North Carolina Central University	5 copies
Library of Congress	2 copies
State Library	5 copies
Western Carolina University	2 copies

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University."

The statute is clear and unambiguous in its mandate to those State agencies who issue publications that they " . . . *shall*, on request, furnish . . ." to the enumerated institution the numbers specified of " . . . reports, bulletins, maps or other publication" (*Emphasis added.*)

The statutory language "shall" is clearly mandatory in this case. The term "furnish" in this context does not contemplate the sale of the publications even at a preferred rate.

Any possible ambiguity about the mandatory nature of the requirement that the publications be furnished to the listed institutions in the number listed on request is dispelled when one notes that their obligation to furnish copies to others than the listed institutions is subject to the "discretion of the issuing official" and subject to the supply available. No such discretionary power is given the issuing authority with respect to the obligation to furnish publications to the listed institutions on request. The statutory language describing the material to be furnished, " . . . any printed report, bulletin, map, or other publication . . ." could not be more broad and all encompassing.

Granted, there may be some fiscal hardship involved for the issuing agency in having to furnish 78 free copies of their report. On the other hand, the General Assembly clearly weighed the relative hardships - those on the issuing agency to furnish the free copies

as opposed to the hardship on the libraries of the State who might otherwise be compelled to allocate their limited resources so as to preclude a ready reference to State documents and publications in their institution's library. The General Assembly opted in favor of wide distribution of State financed publications by free distribution to the institutions listed in G.S. 147-50.

If a State agency issuing publications desires to be exempt from this requirement as to one or all of its publications, it should seek from the General Assembly an express exclusion for all or certain of its " . . . reports, bulletins, maps, and other publications . . . " from the purview of G.S. 147-50.

Robert Morgan, Attorney General
Sidney S. Eagles, Jr.,
Assistant Attorney General

- - -

18 October 1972

Subject: Motor Vehicles; Drivers' Licenses; Limited
Driving Privilege; Driving After License
Revoked; Sufficiency of Warrant

Requested by: Honorable J. William Copeland
Judge of Superior Court

Question: When a person holding limited driving
privileges granted pursuant to
G.S. 20-179(b)(4) violates the restrictions
therein, violation of which constitutes
driving after license revoked as set forth in
G.S. 20-28, does a warrant simply charging
driving after license revoked meet
procedural requirements?

Conclusion: Yes.

G.S. 20-179(b)(1) provides in part:

" . . . Any such limited driving privilege allowed and restrictions imposed thereon shall be specifically recorded in a written judgment which shall be as near as practical to that hereinafter set forth and shall be signed by the trial judge and shall be affixed with the seal of the court and shall be made a part of the records of the said court. A copy of said judgment shall be transmitted to the Department of Motor Vehicles along with any operator's or chauffeur's license in the possession of the person convicted and a notice of the conviction. Such permit issued hereunder shall be valid for such length of time as shall be set forth in the judgment of the trial judge. Such permit shall constitute a valid license to operate motor vehicles upon the streets and highways of this or any other state in accordance with the restrictions noted thereon and shall be subject to all provisions of law relating to operator's or chauffeur's license, not by their nature, rendered inapplicable."

G.S. 20-179(b)(4) provides:

"Any violation of the restrictive driving privileges as set forth in the judgment of the trial judge allowing such privileges shall constitute the offense of driving while license has been revoked as set forth in G.S. 20-28. Whenever a person is charged with operating a motor vehicle in violation of the restrictions, the limited driving privilege shall be suspended pending the final disposition of the charge."

G.S. 20-28(a) provides in part:

"(a) Any person whose operator's or chauffeur's license has been suspended or revoked other than permanently as provided in this chapter who shall drive any motor vehicle upon the highways of the State while such license is suspended or revoked shall be guilty of a misdemeanor"

Actually, the operator's or chauffeur's license of such person is formally revoked by the Department of Motor Vehicles upon receipt of such license from the court, and he has only such driving privileges as are allowed by the court in its judgment, pursuant to G.S. 20-179(b)(4). Therefore, when the holder of the limited driving privilege violates the restrictions contained in the judgment of the court, he is actually driving after license revoked and a warrant which charges driving after license revoked is sufficient.

A valid warrant must charge the offense with sufficient certainty to apprise the defendant of the specific accusation against him so as to enable him to prepare his defense and to protect him from a subsequent prosecution for the same offense. (*State v. Banks*, 263 N.C. 784 (1965)). We think that the charge of driving after license revoked meets this requirement when the offense arises from the violation of the provisions set forth in the judgment of the court allowing limited driving privileges.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

18 October 1972

Subject: Taxation; Ad Valorem; Exemptions; Real Property; Homes for the Aged, Sick and Infirm; G.S. 105-278(5)

Requested by: Mr. William F. Moser
Scotland County Attorney

Question: Is vacant realty owned by Westminster Presbyterian Church Missions, Inc., exempt from ad valorem taxation under G.S. 105-278(5), where it is intended that a rest home for the aged will be built thereon when sufficient funds have been raised?

Conclusion:

No.

The articles of incorporation of Westminster Presbyterian Church Missions, Inc., provide, among other things, that the purpose of the corporation shall be "to erect, acquire, maintain and operate a general domiciliary facility or boarding home, or nursing home, or institution or institutions for the care of the aged and disabled and to that end to acquire by gift, purchase or otherwise and to own, hold, manage, control, sell and convey a site or sites for the construction and equipment of such general domiciliary facility or boarding home, or nursing home, or such institution or institutions at Laurinburg, or at other places in Scotland County, North Carolina." The Internal Revenue Service has found the corporation to be a charitable institution exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code.

On 17 November 1970, the corporation acquired a tract of ten acres in Scotland County, North Carolina. It intends to build a rest home for the aged on the real estate in question, and is now conducting an extensive campaign to raise the necessary funds to erect the building. Until the necessary funds can be raised, the corporation will continue its ownership of the property. However, it is not income producing, and is not being rented or used by any third party.

The question is whether the tract on which the corporation intends to build its facility when funds permit is presently exempt from ad valorem taxation under G.S. 105-278(5),s which provides exemption for "Real property belonging to, actually and exclusively occupied by . . . homes for the aged, sick or infirm . . . not conducted for profit, but entirely and completely as charitable."

Assuming that Westminster is "not conducted for profit" and is "entirely and completely charitable", as the above information indicates, the condition of the statute that must be met is that its real property must be "actually and exclusively occupied by . . . homes for the aged, sick or infirm"

In *Property Tax Exemption and Classifications* by Henry W. Lewis, the author observes on page 169, with reference to a predecessor

statute: "There is no exemption under G.S. 105-297(5) unless the real property is 'actually and exclusively occupied by' a qualifying owner. In a legal sense the word 'occupied' means either of the following: (1) physical possession: the owner must be present on the property exercising control over it and using it; or (2) constructive possession: the owner may not be in control and present on the property but neither is any one else. But in this instance the legislature inserted the word 'actually' in conjunction with the word 'occupied'. This seems to indicate that the statute requires more than constructive possession arising from ownership and that the exemption is not warranted unless the owner has actual physical possession and uses the property."

Bearing in mind the familiar rule of construction that exemption statutes are strictly construed in favor of the taxing authority, it seems to us that the first interpretation of "occupied" is clearly correct, and that the property will be subject to, not exempt from, ad valorem taxation unless and until a "home for the aged, sick or infirm" is constructed upon it.

Robert Morgan, Attorney General
Myron C. Banks,
Assistant Attorney General

- - -

18 October 1972

Subject: Social Services; Juveniles; Medical Care;
Sufficiency of Consent by County
Department of Social Services

Requested by: Mr. Clifton M. Craig
Commissioner
Department of Social Services

Question: Where a child has been placed in the
custody of a county department of social
services, is authorization by that
department for medical care, including

surgery, for such child sufficient to permit this care, absent authorization therefor by the parents of the child?

Conclusion:

Where a child has been placed in the custody of a county department of social services, authorization by that department for medical care, including surgery, for such child is sufficient to permit this care, absent authorization therefor by the parents of the child.

The following extract from G.S. 7A-286, dealing with the disposition of children subject to juvenile jurisdiction, would appear to afford a ready answer to the question posed:

"(2) In the case of any child who needs more adequate care or supervision, or who needs placement, the court may: . . .

c. Place the child in the custody of the county department of social services in the county of his residence, or in the case of a child who has legal residence outside the State, in the temporary custody of the county department of social services in the county where the child is found so that said agency may return the child to the responsible authorities. *Any county department of social services in whose custody or temporary custody a child is placed shall have the authority to arrange for and provide medical care as needed for such child.*" (Emphasis supplied).

However, some controversy has arisen as to the intent of the General Assembly in its usage of the terminology "authority to arrange for and provide medical care as needed for such child." In fact, in some circles, the position has been advanced that this language should be construed as meaning that all that is authorized is for the county department of social services to seek the consent of the parents of the child to this medical care and, in the event such is not

forthcoming, to petition the district court for a court order directing the medical care.

The proponents of this course of action find support for their position in the language of G.S. 7A-286(6), as follows:

"In any case, the court may order that the child be examined by a physician, psychiatrist, psychologist or other professional person as may be needed for the court to determine the needs of the child. If the court finds the child to be in need of medical, surgical, psychiatric, psychological or other treatment, the court may allow the parents or other responsible persons to arrange for such care. If the parents decline or are unable to make such arrangements, the court may order the needed treatment, surgery or other needed care, and the court may order the parents or other responsible parties to pay the cost of such care, or if the court finds the parents are unable to pay the cost of such care, such cost shall be a charge upon the county when approved by the court"

In interpreting these two provisions, cognizance must be taken of the basic purpose of the legislators in developing the statutes dealing with the jurisdiction and procedures applicable to children. The members of the General Assembly have made it abundantly clear that they recognize the only justification for regulatory action on their part in this area is the need to "assure the protection, treatment, rehabilitation or correction" in instances where these needs of the child and of the State would not otherwise be safeguarded. See G.S. 7A-277. With this basic philosophy serving as the touchstone for the evaluation of the two portions of the General Statute involved, it becomes immediately evident that, as affecting medical care, the end in view was to obtain this care in a simple, expeditious manner while yet avoiding the administering of (or later accusations of) precipitate, imprudent or unduly drastic medical treatment.

Thus, it is patent that engrafting a requirement for parental consent or a court order as a prerequisite to needed medical treatment for a child in the custody of the county department of social services

would be totally inconsistent with the legislative intent behind G.S. 7A-286(2)c and would tend to obstruct the achievement of the results desired by the legislators. There is no incompatibility between the two portions of G.S. 7A-286 under discussion. In fact, they complement each other, inasmuch as subdivision (6) of this section is obviously intended to authorize the district court judge exercising juvenile jurisdiction to act as the final arbiter in securing needed medical care in cases where all other responsible personnel (presumably including the county department of social services) have failed to do so.

By way of addendum, it is noted that the thrust of this opinion is not directed toward the emergency type situations described in Article 1A of Chapter 90 of the General Statutes of North Carolina, inasmuch as that Article specifically and unequivocally delineates the procedures which are appropriate for the type of cases described therein. Further, this Office has previously issued an opinion dealing with the sufficiency of the permission of the county director of social services to authorize the performance of an abortion upon a minor child in its custody. See Opinion of Attorney General to Mr. Clifton Craig, 41 N.C.A.G. 862 (1972).

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

20 October 1972

Subject:	State Departments, Institutions and Agencies; Eminent Domain; Relocation Assistance
Requested by:	Mr. C. R. Allen Assistant to the Secretary of Administration
Question:	Do the State and its political subdivisions have the authority to comply with the

provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) in connection with the expenditure of BOR funds for the acquisition of lands for outdoor recreational purposes?

Conclusion:

The State and its political subdivisions have the authority to comply with Public Law 91-646 in connection with the expenditure of BOR funds for the acquisition of lands for outdoor recreational purposes.

The Bureau of Outdoor Recreation assists State agencies, cities, counties and other public agencies in the acquisition of lands for outdoor recreational purposes. These BOR funds are paid directly to the State, and the State is responsible for distributing the funds to the various public agencies which are to receive assistance. The State must assure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) by any agency which is to receive such assistance before the agency becomes eligible for BOR assistance. An opinion has been requested as to the authority of the State and its political subdivisions to comply with the provisions of this Act.

The 1971 General Assembly of North Carolina enacted legislation codified as Article 2 of Chapter 133 of the General Statutes, cited as "The Uniform Relocation Assistance and Real Property Acquisition Policies Act." One of the purposes of the Act was "to insure continuing eligibility for federal aid funds to the State and its agencies and subdivisions." G.S. 133-6. The Act covers the State or any board, bureau, commission, institution, or other agency of the State, and any board or governing body of a political subdivision of the State, or any agency, commission or authority of a political subdivision of the State. G.S. 133-7(1).

Title II of the federal Act contains provisions relating to relocation assistance. Section 210 of that Title provides that the head of a federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which federal financial assistance will be available to pay all or part of the cost of any

program or project which will result in the displacement of any person, unless he receives satisfactory assurances from the State agency of compliance with the provisions of Sections 202, 203, 204 and 205 of the Act. The State and its political subdivisions may comply with these provisions of the federal Act. See G.S. 133-8 through G.S. 133-11.

Title III of the federal Act relates to real property acquisition policies and procedures. Section 305 of that Title provides that the head of a federal agency shall not approve any program or project or grant to, or contract or agreement with, a State agency, under which federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property, unless he receives satisfactory assurances from such State agency that:

"(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in Section 301 and the provisions of Section 302, and

"(2) property owners will be paid or reimbursed for necessary expenses as specified in Sections 303 and 304."

Sections 301 and 302 of the federal Act set forth certain policies and practices to be followed in acquiring real property. It is the opinion of this Office that the State and its political subdivisions may follow these policies and practices in acquiring real property for outdoor recreational purposes. These policies and practices are not specifically covered by the State Relocation Assistance Act.

Section 303 of the federal Act provides for reimbursement to the property owner for certain expenses incidental to the transfer of title to a public agency. The State and its political subdivisions may comply with this section. G.S. 133-12.

Section 304 provides for payment to the property owner for certain litigation expenses incurred in a condemnation action if (1) the court determines that a condemnation is unauthorized or (2) the condemning authority abandons a condemnation or (3) the property

owner brings an inverse condemnation action and obtains an award of compensation.

The North Carolina Department of Administration will be responsible for making all State acquisitions of real property for recreational purposes. The Department of Administration has statutory authority to reimburse the property owner for the litigation expenses set forth in Section 304 of the federal Act when the final judgment is that the State cannot acquire the property by condemnation or if the proceeding is abandoned by the State, or if the property owner obtains an award of compensation in an inverse action. See G.S. 146-24(c) and G.S. 136-119.

G.S. 160A-243.1 specifically authorizes municipalities to reimburse property owners for the litigation expenses set forth in Section 304 of the federal Act. It is the opinion of this Office that counties would have the authority to reimburse the property owner for such litigation expenses when property is acquired by eminent domain for recreational purposes. G.S. 160A-353(3) authorizes counties to acquire lands for recreational purposes by eminent domain. G.S. 160A-353(6) authorizes counties to accept gifts or grants of real or personal property for park and recreation programs, and to accept and hold such gifts or grants subject to such terms and conditions as may be imposed by the grantor. Under this latter provision, it is the opinion of this Office that counties would have the authority to agree to comply with Section 304 of the federal Act in order to obtain a grant of BOR funds for recreational purposes.

Robert Morgan, Attorney General
Roy A. Giles, Jr.,
Assistant Attorney General

- - -

27 October 1972

Subject: Motor Vehicles; Drunken Driving, "Public
Vehicular Area"

Requested by: Mr. C. C. Tarleton
Albemarle Chief of Police

Question: Under the provisions of G.S. 20-139, are
driveways of an apartment complex
"public vehicular areas"?

Conclusion: Yes.

G.S. 20-139 in part, reads as follows:

"(a) It is unlawful and punishable as provided in G.S. 20-179 for any person who is an habitual user of any narcotic drug to drive or operate any vehicle upon any highway or public vehicular area within this State.

"(b) It is unlawful and punishable as provided in G.S. 20-179 for any person, who is under the influence of any narcotic drug or who is under the influence of any other drug to such degree that his physical or mental faculties are appreciably impaired, to drive or operate a motor vehicle upon any highway or public vehicular area within this State."

G.S. 20-16.2 states, in part:

"(g) As used in this section, the term 'public vehicular area' shall mean and include any drive, driveway, road, roadway, street, or alley upon the grounds and premises of any public or private hospital, college, university, school, orphanage, church, or any of the institutions maintained and supported by the State of North Carolina, or any of its subdivisions or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment providing parking space for customers, patrons, or the public."

Though public vehicular area is not defined in G.S. 20-139, it is

defined in G.S. 20-16.2, which relates to the operation of motor vehicles while under the influence of intoxicants. Both G.S. 20-139 and G.S. 20-16.2 are keyed to the operation of a motor vehicle upon any highway or public vehicular area within this State while either under the influence of intoxicants or narcotic drugs to the degree that the operator's physical or mental faculties are appreciably impaired and the punishment for driving under the influence of drugs or intoxicants is as set out in G.S. 20-179. Therefore, it would be illogical to place upon the words "public vehicular area" a different definition for the offense of driving under the influence of drugs than that placed upon the words for the offense of driving under the influence of intoxicants.

G.S. 20-16.2 defining public vehicular area uses the terms "supermarket, store, restaurant or office building, or *any other business* or municipal establishment *providing parking space for customers, patrons, or the public.*" (*Emphasis added*).

Though the word "business", as used in G.S. 20-16.2, has no special legal meaning, it has been held to mean "activity or enterprise for gain, benefit, advantage or livelihood." *Black's Dictionary of Law, Fourth Edition*, page 248.

Generally, the operation of an apartment house or office building where all modern conveniences are furnished as a part of consideration paid for rooms may be included in the use of the word "business" as this is a word of very broad meaning and embraces everything about which a person can be employed and is that which occupies the time, attention or labor of men for the purpose of a livelihood or profit. *Penn v. Whitten*, D.C. Mun. App. 42A 2d 136; *Words and Phrases, Permanent Edition*, Volume 5A, Business, page 656.

Parking areas surrounding an apartment complex are generally for the use of the tenants or lessees and their invited guests, or those seeking contact with such tenants or lessees. Therefore, even under the strict construction required in criminal statutes, it would appear that for the purposes used the words "customers, patrons or the public" would include tenants, lessees, guests, etc.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

27 October 1972

Subject: Civil Procedure; Service of Process;
Nonresidents

Requested by: Mr. J. M. Penny
Assistant Commissioner of Motor Vehicles

Question: Under the provisions of G.S. 1-105 and 1-105.1 as reinstated, is the Commissioner of Motor Vehicles authorized to accept service of process by mail or directly by an attorney, or must service of process be served on the Commissioner of Motor Vehicles by the Sheriff of Wake County or the United States Marshal?

Conclusion: Service of process under the provisions of G.S. 1-105 and 1-105.1 must be by the Sheriff of Wake County or some other person duly authorized by law to serve summons.

G.S. 1-105, providing for service of summons on nonresident motorists, must be strictly construed and strictly followed. (*Distributors vs. McAndrews*, 270 N.C. 91; *In re Appeal of Harris*, 273 N.C. 20; also see *Crabtree vs. Coats & Burchard Co.*, 7 N.C. App. 624). Service of process after January 1, 1970, must be as prescribed in G.S. 1A-1, Rule 4.

G.S. 1A-1, Rule 4, in pertinent part, provides:

"(a) *Summons--issuance; who may serve.*--Upon the

filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons

"(h) *Summons--when proper officer not available.*--If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, . . . the clerk of the issuing court . . . shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county."

The service of summons should not be confused with the service of the complaint pursuant to the provisions of G.S. 1A-1(3) which allows service of the complaint by registered mail when delayed filing of the complaint is allowed by order of the court.

G.S. 1-105 does not specifically authorize the Commissioner of Motor Vehicles as the "true and lawful attorney" for service of process on nonresident motorists to accept service. We conclude that process must be served on him as hereinabove set out.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

27 October 1972

Subject: State Departments, Institutions and
Agencies; Orthopedic Hospital; Authority
to Make Charges for Treatment, Care and
Maintenance

Requested by: Mr. Ben W. Aiken
Assistant Secretary for Administration
N. C. Department of Human Resources

Questions: (1) May the North Carolina Orthopedic Hospital be authorized to make charges for treatment, care, and maintenance of patients?

(2) If the North Carolina Orthopedic Hospital may be authorized to make charges for treatment, care and maintenance of patients, who may vest the hospital with this authority?

Conclusions: (1) The North Carolina Orthopedic Hospital may be authorized to make charges for treatment, care and maintenance of patients.

(2) The Board of Trustees of the North Carolina Orthopedic Hospital may authorize the hospital to make charges for treatment, care and maintenance of patients.

Article 1 of Chapter 131 of the General Statutes of North Carolina is devoted in its entirety to the North Carolina Orthopedic Hospital. G.S. 131-1 is the portion of this Article which is pertinent to the questions posed and this section of the General Statutes reads as follows:

"§ 131-1. *Board of trustees; term of office; organization and powers.*—The Governor shall appoint a board of trustees, consisting of nine members, for the North Carolina Orthopedic Hospital, and they shall be divided into three classes of three members each. The first class shall be appointed for two years, the second for four years, and the third class for six years. They shall hold their offices until their successors have

been appointed, and the term of office of each shall begin from the date of the selection of the site. The Governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. The board of trustees shall organize by electing from its members a president, a secretary, and a treasurer, and three of its members as an executive committee. The board shall have power to erect any buildings necessary, make improvements, or in general do all matters and things that may be beneficial to the good government of the institution, and to this end they may make bylaws for the government of the same."

Due to a certain lack of specificity in the above quoted section, consideration of it, *in vacuo*, might foster a degree of uncertainty as to the exact nature of the North Carolina Orthopedic Hospital. However, it is noted that G.S. 143A-150 transfers the North Carolina Orthopedic Hospital and its board of trustees by a type II transfer to the Department of Human Resources. Thus, by so providing in this, a portion of the "Executive Organization Act of 1971" (See G.S. 143A-1), the General Assembly removed any basis for contending that this hospital should be considered as other than one operated by and under the control of the State of North Carolina. As a result, provisions elsewhere in the General Statutes governing the operation of hospitals coming within the purview of county or other local governments are not controlling of the present questions.

Consequently, the language of G.S. 131-1 appears to be determinative of the first question posed. With regard to that language, it is difficult to visualize any broader investiture of authority than that included in the " . . . power . . . in general to do all matters and things that may be beneficial to the good government of the institution." Clearly, the carte blanche given the board of trustees by the General Assembly permits that board to authorize the making of charges, where appropriate, for treatment, care and maintenance of patients.

As previously indicated, the Executive Organization Act of 1971 transferred this hospital to the Department of Human Resources via a type II transfer. G.S. 143A-6(b) and (c) contain the following

definitive terminology as to this type of transfer:

"(b) Under this Chapter, a type II transfer means the transferring intact of an existing agency, or part thereof, to a principal department established by this Chapter. When any agency, or part thereof, is transferred to a principal department under a type II transfer, that agency, or part thereof, shall be administered under the direction and supervision of that principal department, but shall exercise all its prescribed statutory powers independently of the head of the principal department, except that under a type II transfer the management functions of any transferred agency, or part thereof, shall be performed under the direction and supervision of the head of the principal department.

"(c) Whenever the term 'management functions' is used it shall mean planning, organizing, staffing, directing, coordinating, reporting and budgeting."

Literal reading of the above quoted subsections of the general statutes makes it apparent that, inasmuch as this is a type II transfer, the principal department would not be authorized to institute a program of making charges of the nature contemplated here. Thus, the board of trustees of the organization would be the proper entity for instituting such a program.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

6 November 1972

Subject: Intoxicating Liquors; Transportation;
 Alcoholic Beverages Being Transported to
 ABC Stores; Authority of Local Board to
 Transport Beverages

Requested by: Mr. William F. Hester, Jr.
Administrator
State Board of Alcoholic Control

Question: May a local board of alcoholic control transport alcoholic beverages for its stores from Central Warehouse in Wake County to its own stores?

Conclusion: Although local boards are empowered by the provisions of G.S. 18A-17(7) to transport and have in their possession for sale alcoholic beverages, in order to accomplish this transportation, they must comply with the provisions of regulations of the State Board thereto.

Although G.S. 18A-17(7) empowers local boards of alcoholic control to transport alcoholic beverages for purposes of sale, that section does not specify how that transportation is to be accomplished and we do not take that to be sufficient authorization as to method, standing alone, to authorize local boards of alcoholic control to transport such beverages. G.S. 18A-3(a) provides that intoxicating liquors (which includes the higher alcoholic content "alcoholic beverages") shall not be transported except as authorized by Chapter 18A.

Chapter 18A has three levels of transportation of alcoholic beverages. G.S. 18A-26(a) allows transportation of up to a gallon of alcoholic beverages as long as they are not for sale and under certain other conditions. Obviously, this provision would not apply to local boards. The second type of transportation is provided in G.S. 18A-28 which provides for a purchase transportation permit of up to five gallons of alcoholic beverages from a named ABC store to a destination within the county. These five gallons also must not be for the purpose of sale and, therefore, this provision, too, cannot apply to the local boards.

The last provision for transportation of alcoholic beverages is contained in G.S. 18A-29 which deals with commercial transportation. One of the permitted destinations of the commercial

transportation of alcoholic beverages is, of course, the local stores or boards. The provisions of subsection (a) of G.S. 18A-29 require that transportation by or to local boards of alcoholic control be in accordance with regulations adopted by the State Board of Alcoholic Control. Subsection (b) of G.S. 18A-29 does not apply to transportation of alcoholic beverages to local boards and stores.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

6 November 1972

Subject: Public Officers and Employees; Double
Office Holding; Member of County Social
Services Board and County School Board

Requested by: Mr. Isaac T. Avery, Jr.
Iredell County Attorney

Question: May one person serve concurrently as a
member of the county board of social
services and as a member of the local
school board?

Conclusion: Yes, unless the member of the social
services board is also a county
commissioner. Under Article IV, Section 9,
North Carolina Constitution, a person may
not hold concurrently any two offices in
this State which are elective. No person
may hold any two or more appointive or
any combination of elective and appointive
offices except as the General Assembly
shall provide by general law.

In 1971 the General Assembly enacted G.S. 128-1.1, which provides
that a person who holds an appointive office in State or local

government is authorized to hold concurrently one other appointive office. Any person who holds an elective office in State or local government is authorized to hold concurrently one appointive office.

G.S. 108-9 provides that the county board of social services shall be appointed by the county board of commissioners, and further provides that one member of the social services board may be a county commissioner.

A member of the social services board holds an appointive office. A member of the board of county commissioners holds an elective office. If the member of the social services board was already a member of the county board of commissioners, he would be holding concurrently one appointive and one elective office, and therefore could not hold membership on the county school board, which is an elective office.

However, if the person does not hold any other public office, either elective or appointive, then he may hold concurrently both positions, since one is elective and the other is appointive and such dual office holding is authorized by G.S. 128-1.1.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

6 November 1972

Subject: Social Services; Juveniles; Probation;
Termination Under Interstate Compact on
Juveniles

Requested by: Miss Lela Moore Hall
Director
New Hanover County
Department of Social Services

Question: Under the Interstate Compact on Juveniles,

is a North Carolina juvenile probation officer authorized to supervise a probationer in this State who is over the age of 18 upon the request of another member of the Compact whose juvenile court has originally placed him on probation and has retained jurisdiction past the age of 18?

Conclusion:

Under the Interstate Compact on Juveniles, a North Carolina juvenile probation officer is authorized to supervise a probationer in this State who is over the age of 18 upon request of another member of the Compact whose juvenile court has originally placed him on probation and has retained jurisdiction past the age of 18.

The question has arisen as to whether a prior opinion of this office is controlling of this situation and whether such opinion is in conflict with the Interstate Compact on Juveniles. That opinion was to the effect, *inter alia*, that:

"(2) A juvenile probation officer has neither the duty nor the authority to supervise any person who is under an order of juvenile probation when the term of probation extends beyond the eighteenth birthday of the probationer." Opinion of Attorney General to Mr. Clifton M. Craig, 41 N.C.A.G. 771.

The prior opinion referred to dealt only with use within the jurisdiction of the district judge acting as a juvenile court within this State. Thus, literal interpretation of the statutes cited in the former opinion mandated the conclusion arrived at therein and as just quoted.

However, the question now posed interjects an entirely new element into the picture, i.e., the Interstate Compact on Juveniles, which has been codified as Article 5, Chapter 110 of the North Carolina General Statutes. This Compact is designed to insure cooperation between member states in two general categories of delinquent

juveniles. The first category is the so-called "run-aways", while the second category includes delinquent juveniles on probation or parole who are now located in another member state from the one originally processing their juvenile proceedings. See Article I of the Compact.

As to the first category of youths, Article IV(c) of the Compact defines a juvenile for purpose of that Article as a person who is a minor under the law of the state of residence of his parent, guardian, or one having legal custody. However, the language of Article IV makes it clear that this definition is intended only for this particular Article.

The cooperative supervision of probationers and parolees is covered by Article VII of the Compact. This later Article sets forth the responsibilities of the "sending state" and the "receiving state" with regard to delinquent juveniles who are placed on probation or parole in one member state but later reside in another member state during the period of probation or parole. While this Article provides that a receiving state accepting supervision over the probationer or parolee " . . . will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole," nowhere in Article VII is the term delinquent juvenile defined.

This absence of definitive language at this particular place in the Compact does not mean that we are completely without guidance, inasmuch as Article III contains the following revealing definition:

" . . . for the purposes of this Compact, 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court "

Literal reading of the above definition compels the conclusion that probation officers within North Carolina are not stripped of authority to supervise probationers over 18 years of age if they are

still considered as delinquent juveniles and still subject to the jurisdiction of the court which originally adjudged them to be delinquent. This conclusion is certainly in keeping with the main theme of the Compact which is set out in Article I of the Compact as follows:

"In carrying out the provisions in this Compact the party states shall be guided by the non-criminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes."

In summation, the above quoted conclusion taken from the opinion set forth in 41 N.C.A.G. 771 is applicable to juveniles placed on probation by a North Carolina juvenile court but is not conclusive of the situations contemplated by the Interstate Compact on Juveniles.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

9 November 1972

Subject: State Departments, Institutions and Agencies; Tort Liability; Mental Health; Area Mental Health Boards; Board Members; Authority to Sue and be Sued

Requested by: Mr. R. Patterson Webb
Acting General Business Manager
Department of Mental Health

Question: Are area mental health boards and individual board members in their official capacity authorized to sue and be sued?

Conclusion:

Area mental health boards and individual board members enjoy sovereign immunity and can be sued only as authorized by the creating act or other statute; an area mental health board may maintain an action in connection with its governmental functions.

Area mental health boards are creatures of the legislature established pursuant to the provisions of G.S. 122-35.20, for the purposes set forth in G.S. 122-35.19, and are under the supervision, direction, and control of the State Board of Mental Health. At the very least an area mental health board constitutes an entity created by the legislature with governmental functions. An action cannot be maintained against the State or an agency of the State unless it consents to be sued, and ordinarily express consent is a prerequisite. This rule extends to political subdivisions of the State in the exercise of governmental functions, and such agency cannot exceed the authority conferred upon it. See 7 *Strong, N.C. Index* 2d, State, Sec. 4, pp. 40-41.

Generally speaking, the State or an agency of the State may maintain an action in its own courts. However, unless specifically authorized by the creating act or otherwise by statute, such entity enjoys sovereign immunity. The act establishing the area board does not authorize suits either against the board or its duly constituted board members. However, by virtue of the North Carolina Tort Claims Act the sovereign immunity of *State agencies* for tort actions has been waived for monetary damages not exceeding \$20,000.00.

Thus, an area mental health board may be subject to an action in tort under the provisions of G.S. 143-291 *et seq.*

Robert Morgan, Attorney General
Parks H. Icenhour,
Assistant Attorney General

- - -

29 November 1972

Subject: University of North Carolina at Chapel Hill;
Public Utilities; Governor's Commission to
Study Sale or Retention of University
Owned Utilities; Chapter 723, Session Laws
of 1971

Requested by: Senator John T. Church, Chairman
Utilities Study Commission
University of North Carolina at Chapel Hill

Question: Does the Special Study Commission,
created and appointed under Chapter 723,
Session Laws of 1971, to study the
disposition of the University owned
utilities, have the authority under said
legislative Act to undertake further studies
into the disposition to be made of said
utilities after it has made its study and
submitted its final report and
recommendations to the Board of
Governors for approval within the time
specified in said Act for the making of such
study and report and after the expiration
of such time as specified in said Act?

Conclusion: The Special Study Commission appointed
by the Governor does not have the
authority under Chapter 723, Session Laws
of 1971, to undertake further studies into
the disposition to be made of the
University owned utilities after it has made
its study and submitted its final report and
recommendations to the Board of
Governors for approval within the time
specified in said Act for the making of such
study and report and after the expiration
of such time as specified in said Act.

Chapter 723, Session Laws of 1971 (Senate Bill 622), is an Act

providing for appointment by the Governor of a Special Commission to study the feasibility of retaining or selling or otherwise disposing of the utilities (telephone, electric, water and sewer systems) owned by the University of North Carolina at Chapel Hill and to make reports and recommendations with regard thereto to the Board of Trustees of the University of North Carolina, which has now been redesignated under Chapter 1244, 1971 Session Laws, the Act to consolidate the institutions of higher learning in North Carolina, (G.S. 116-3) as the Board of Governors of the University of North Carolina. The Act creating the Special Study Commission (Chapter 723, 1971 Session Laws) further empowers said Commission, in consultation with University officials, to actually negotiate for and effect the terms of any sale or other disposition of any of such utilities which is recommended to and approved by the Board of Trustees (Board of Governors). This Act was ratified by the General Assembly on July 1, 1971, and provides that it shall be effective upon its ratification.

This Act creating the Study Commission sets out an orderly step-by-step procedure to be followed with the first five sections thereof providing (1) for the appointment of the Commission members, (2) for the making of the study by the Commission within a specified time, (3) for the submission by the Commission of its final report and recommendations to the Board of Trustees (Board of Governors), (4) for the Board of Trustees (Board of Governors) to consider the report and recommendations and to approve or modify said report and recommendations, and (5) for the Special Commission to proceed with negotiations to effect the terms of any disposition of any of the utilities which is recommended to and approved by the Board of Trustees (Board of Governors). In accordance with this procedure, the Governor appointed the members of the Commission and the Commission thereafter commenced and completed its study and submitted its final report and recommendations to the Board of Governors. Section 2 of the Study Commission Act, after specifying the duty of the Commission to make its study, specifically provides: "The Commission *shall* complete its study within six months of its appointment; provided, however, *for good cause shown* the Governor may grant the Commission an additional period, *not to exceed six months, to complete the study.*" (*Emphasis added*).

The Commission was appointed by the Governor on November 30, 1971, and the Commission requested an extension of six months prior to May 31, 1972, for the completion of its study. This extension was granted. It is readily apparent from the above quoted wording of Section 2 of the Act that time was considered to be of the essence and that the completion of the study and recommendations of the Commission within the specified period of time is mandatory. Therefore, the Commission appointed under this Act had an initial period of six months beginning November 30, 1971, to complete its study and recommendations, and with the Governor's grant of the additional period of six months authorized for good cause shown, the authority and power of the Commission to make its study and recommendations extends to and including November 30, 1972 (41 N.C.A.G. 925). There is no authority under this Act for the Study Commission to expand or alter the time limitation specified by the General Assembly for the making of the study and recommendations.

Section 3 of the Study Commission Act provides as follows: "The Commission shall make its *final report and recommendations* to the full Board of Trustees indicating its findings, and recommending retention in whole or in part of the enterprises or projects, or detailed plans, specifications and requirements for the sale, lease, rental, transfer or other disposition of the enterprises or projects or any portion thereof. This report shall include a recommendation as to the property to be conveyed and shall fully describe said property, whether it be real or personal or both" (*Emphasis added.*) In accordance with this directive, and within the time limit specified in Section 2 of the Act, the Study Commission completed its study and submitted its final report and recommendations to the full Board of Governors on August 3, 1972. This report included detailed findings of fact made by the Study Commission with respect to each of the utilities involved and made specific recommendations to the Board of Governors as to the disposition of each of these utilities, with appropriate description of the properties involved. The Commission submitted the following recommendations: (1) That the University sell all of its telephone utility system, including both on- and off-campus facilities, with the exception of the campus exchange building to be leased to the purchaser; (2) that the University sell its off-campus electrical system and retain the entire on-campus system; and (3) that an agreement be executed between the

University and the Town of Chapel Hill providing for the leasing to the Town of Chapel Hill of the University owned water facilities, or for the transfer of the sewer and water utilities to a water-sewer authority if such an authority were created.

Since the Special Study Commission has now made its study and submitted its final report and recommendations to the Board of Governors within the time specified in the Act, the study functions of the Commission under Section 2 of the Act are now completed.

Robert Morgan, Attorney General
I. Beverly Lake, Jr.,
Assistant Attorney General

- - -

1 December 1972

Subject: Motor Vehicles; Drivers' Licenses; Limited Driving Privilege; Revocation; Driving Under the Influence, Second Offense

Requested by: Honorable Joseph E. Dupree District Court Judge Twelfth Judicial District

Question: The defendant is charged with two separate offenses of driving while under the influence of intoxicating liquor within a period of approximately one week. He is convicted of one of the charges and is given a limited driving privilege. Subsequently, he is convicted of the other charge, but he has not violated any of the terms of his restricted driving privilege. Is his limited driving privilege revoked by the subsequent conviction, and must he surrender it to the Court?

Conclusion: The limited driving privilege is subject to revocation as a result of the subsequent

conviction and should be surrendered to the Court.

A limited driving privilege issued by a court is, by express provision of G.S. 20-179, "subject to all provisions of law relating to operator's or chauffeur's license, not by their nature rendered inapplicable and, therefore, are revokable as any other motor vehicle operator's license. G.S. 20-179(b)(1).

G.S. 20-17(2) is mandatory and requires the Department of Motor Vehicles to revoke the operator's license of persons convicted of driving while under the influence of intoxicants. The limited permit being an operator's license by operation of law must be revoked by the Department of Motor Vehicles for such period as prescribed under G.S. 20-19(d) and (e).

G.S. 20-24, in pertinent part, reads as follows:

"§ 20-24. When court to forward license to Department and report convictions.--(a) Whenever any person is convicted of any offense for which this article makes mandatory the revocation of the operator's or chauffeur's license of such person by the Department, the court in which such conviction is had shall require the surrender to it of all operators' and chauffeurs' licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the Department "

The limited driving privilege constituting an operator's license under the provisions of G.S. 20-179(b)(1) should be forwarded to the Department of Motor Vehicles.

The Department of Motor Vehicles, upon receipt of notice of conviction of driving under the influence by a person holding a limited driving privilege along with such person's copy thereof, should revoke such person's driving privilege as is provided under G.S. 20-17(2) for such period as is prescribed under G.S. 20-19(d) and (3). The limited driving privilege should be returned by the Department of Motor Vehicles to the court of issuance along with

a statement informing the court issuing the limited driving privilege of the action taken in order that the court issuing the limited driving privilege may rescind its order or take such action as it deems appropriate.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

5 December 1972

Subject: Jails; Sheriffs; Duty of Sheriff to Transfer
Prisoners to Adjoining County

Requested By: Mr. W. Vance McCown
Tryon City Attorney

Question: Where a jail is maintained by a county,
should the sheriff be required to transport
women prisoners, when the county jail
lacks separate detention facilities, to a jail
in an adjoining county?

Conclusion: Yes.

G. S. 153-190.1 requires the jailer to receive, incarcerate and retain any prisoner brought to the jail by any law enforcement officer of the county, city or State, except a prisoner not arrested in the county or when the city has its own jail. If a jail is maintained by the county to receive and incarcerate prisoners and a prisoner is ordered incarcerated by the magistrate, he becomes a prisoner of the county and as such is the responsibility of the sheriff or other official of the county charged with the keeping of the jail. As in the case where there is no jail, the sheriff or other appropriate officer of the county has the responsibility to confine any prisoner arrested on process in the jail of an adjoining county. G. S. 153-188. The expense for conveying prisoners is paid by the county from which the prisoner is removed. G. S. 153-186.

Therefore, when a county jail lacks separate detention facilities for women prisoners, it is the responsibility of the sheriff to transport these prisoners to a jail in an adjoining county when necessary.

Robert Morgan, Attorney General
Edward L. Eatman, Jr.,
Assistant Attorney General

- - -

5 December 1972

Subject: Licenses and Licensing; Day Care; Facilities
on Federal Reservations

Requested By: Mr. John Sokol, Director
North Carolina State Day Care Licensing
Board

Question: Is a day-care facility operated by the armed
forces on a federal reservation subject to
licensing under the child day-care licensing
act?

Conclusion: Yes, unless the area is one in which the
federal government has exclusive
jurisdiction.

G. S. 110-86 defines the terms day care, day-care facility and day-care plan and gives licensing exemptions to the following: "public schools; nonpublic schools whether or not accredited by the State Department of Public Instruction which regularly and exclusively provides the course of grade school instruction to children who are of public school age; summer camps having children in full-time residence; summer day camps; and Bible schools normally conducted during vacation periods."

Facilities operated by some governmental entity or located on a federal reservation are not among the exemptions and, therefore, the licensing law of Article 7 of Chapter 110 of the General Statutes does apply.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

5 December 1972

Subject: Public Contracts; Bidding;
Factory-Installed Electrical, Heating and
Plumbing Facilities; Separate Bids
Required; G. S. 143-128.

Requested By: Mr. W. I. Thornton, Jr.
Durham City Attorney

Question: May a county or city let for bid a contract
for public buildings of the modular unit
type which have factory-installed electrical,
plumbing and heating facilities without
having separate specifications drawn for
such facilities so as to permit separate and
independent bids upon each class of work?

Conclusion: No. G. S. 143-128 expressly requires,
when the cost of the building exceeds
\$20,000, separate specifications for
heating, plumbing and electrical
installations. All such specifications must
be drawn so as to permit separate and
independent bidding upon each class of
work enumerated in G. S. 143-128.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

5 December 1972

Subject: Motor Vehicles; Drivers' Licenses; Habitual Offenders

Requested By: Judge Henry A. McKinnon, Jr. Sixteenth Judicial District

Question: Does the court have any discretion under the provisions of Article 8 of Chapter 20 of the General Statutes (habitual offenders) to do other than order that the defendant not drive upon the highways of the State of North Carolina and that he turn in all licenses and permits to the court when the defendant admits the correctness of his drivers' license record as certified to the court by the Department of Motor Vehicles pursuant to G. S. 20-222 and such record places the defendant clearly within the definition of an habitual offender pursuant to the provisions of G. S. 20-221?

Conclusion: No.

G. S. 20-226 provides:

"§ 20-226. *Court's findings, judgment.*— If the court finds that such person is not the same person named in the aforesaid abstract, or that he is not an habitual offender under this article, the proceeding shall be dismissed, but if the court finds that such person is the same person named in the abstract and that such person is an habitual offender, the court shall so find and by appropriate judgment shall direct that such person not operate a motor vehicle on the highways of the State of North Carolina and to surrender to the court all licenses or permits to operate a motor vehicle upon the highways of this State. The clerk of the court shall forthwith transmit a copy of such judgment together with any licenses or permits

surrendered to the Department of Motor Vehicles."

The defendant having admitted the correctness of his record as certified by the Department of Motor Vehicles and such record places the defendant in the category of an habitual offender as defined in G. S. 20-221, the court, by statute, has the duty of ordering that such defendant not operate a motor vehicle on the highways of North Carolina, and that he surrender all licenses and permits to operate a motor vehicle to the court for transmittal to the Department of Motor Vehicles.

G. S. 20-227 sets the terms of revocation:

"§ 20-227. *No new license issued for five years.*— No license to operate a motor vehicle in North Carolina shall be issued to an habitual offender,

(1) For a period of five years from the date of the judgment of the court finding such person to be an habitual offender and

(2) Until the privilege of such person to operate a motor vehicle in this State has been restored by judgment of the superior court division."

It would appear that the General Assembly, fully realizing the seriousness of the habitual offender act, provided for a hearing before any action was taken so as to guard against hardships which may arise through error. Therefore, if the court finds that the record is that of the defendant and is correct and that such record places defendant within the category defined as an habitual offender pursuant to G. S. 20-221, the action to be taken by the court is clearly spelled out by the provisions of G. S. 20-226, *supra*.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

15 December 1972

Subject: Counties; Commissioners; Compensation;
Fixing Compensation of County
Commissioners Pursuant to G.S. 153-13.

Requested by: Mr. James C. Fox
New Hanover County Attorney.

Question: May the county commissioners amend the
county budget to raise or lower their
compensation any time during the fiscal
year or is their authority to fix such
compensation confined to the adoption of
the annual budget ordinance?

Conclusion: G.S. 153-13 confines the commissioners'
authority to fix their compensation to the
time required by statute for the publication
and adoption of the annual budget
ordinance.

G.S. 153-48.2(1) provides that the compensation and allowance of
the board of county commissioners shall be determined as provided
in G.S. 153-13.

G.S. 153-13 provides that the compensation and allowances of the
chairmen and commissioners may be fixed by the board of
publication in and adoption of the annual budget ordinance. The
county fiscal control act provides for the time and adoption of the
budget resolution. Thus we conclude that the compensation of the
commissioners can only be changed as provided in G.S. 153-13.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

15 December 1972

Subject: Courts; Juveniles; Probation; Education;
Compulsory Attendance Law

Requested by: Honorable J. W. H. Roberts
Chief District Judge
Third Judicial District

Question: Once jurisdiction has attached to a delinquent juvenile under 16 years of age, may a juvenile court later issue a valid order committing such juvenile to a training school or educational institution when the juvenile is between 16 and 18 years of age but is still on probation?

Conclusion: Once jurisdiction has attached to a delinquent juvenile under 16 years of age, a juvenile court may later issue a valid order committing such juvenile to a training school or educational institution when the juvenile is between 16 and 18 years of age but is still on probation.

The situation giving rise to this question involves a child who, when under 16 years of age, was placed on probation for an offense by the juvenile court and then, after attaining the age of 16 years, but while still a minor, violated the terms of the probation. As a result, the district court judge, acting as the juvenile court, apparently was of the opinion that it would be in the individual's best interest to commit him to a suitable training school or educational institution but had some qualms as to his authority to do so.

In this situation, it is assumed that the original juvenile court action when the individual was under 16 years of age included an adjudication that the child was "delinquent, undisciplined, dependent or neglected". Such being the case, under the provisions of G.S. 7A-286, the juvenile court retains jurisdiction of a child "during the minority of the child", unless the jurisdiction is

otherwise terminated due to causes not pertinent here. In addition, subparagraph (5) of G.S. 7A-286 authorizes commitment of a delinquent child to the North Carolina Board of Juvenile Correction for assignment to an appropriate facility operated by the Board "for an indefinite term, not to extend beyond the eighteenth birthday of the child", with proviso for even further extension in order to complete a vocational training program.

In the face of the above statutory language, apparently the question posed stems from the possibility of conflict between these provisions and the North Carolina law dealing with the subject of the overall education of children. The specific section giving concern is G.S. 115-166 which provides, *inter alia*, as follows:

"§ 115-166. *Parent or guardian required to keep child in school; exceptions.*--Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. No person shall encourage, entice or counsel any such child to be unlawfully absent from school.

"The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term 'school' as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the county or city superintendent of schools or the State Board of Education."

Dealing with this same subject, G.S. 115-169 provides that a parent, guardian or other person violating the above provisions shall be guilty of a misdemeanor.

Presupposing that the training school or educational institution contemplated in the question falls within the category of "school"

as defined in G.S. 115-166, when the two sections of the General Statutes presently under discussion are aligned and examined closely it is readily apparent that there is no conflict between them. G.S. 115-166 is obviously designed to levy a requirement on responsible adults to see that their charges receive an adequate education, with criminal culpability arising from failure to fulfill the obligation imposed. Conversely, it is equally patent that the wording of G.S. 115-166 is designed to limit the criminal liability of these responsible adults to the period before the children reach their sixteenth birthday. With this duality of purpose, it is inconceivable that the General Assembly intended by this legislation to hamper the juvenile court in the proper disposition of cases within its jurisdiction. Far more explicative of the intent of the legislators is the proviso contained in G.S. 7A-277 that the juvenile court legislation is intended to assure "the protection, treatment, rehabilitation, or correction which is appropriate in relation to the needs of the child and the best interest of the State." Since rendering a negative answer to the question posed would serve to defeat the purpose of the legislators, an affirmative answer is required.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

19 December 1972

Subject: Municipalities; Day-Care Centers; No
Authority to Expend Municipal Funds

Requested by: Mr. Dale Shepherd
Assistant City Attorney
Greensboro

Question: Do municipalities have the statutory
authority to expend municipal or nontax
funds for day-care centers to be located at
federally subsidized housing projects?

Conclusion: No.

The only potential authority for using tax or nontax money in day-care centers in federally subsidized housing projects is in G.S. 157-42(2). Although this section applies to housing authorities, it does not apply to municipalities. We are unable to find any other statutory authority for municipalities to enter into such an arrangement.

Robert Morgan, Attorney General
(Mrs.) Christine Y. Denson,
Assistant Attorney General

- - -

27 December 1972

Subject: Public Officers & Employees; Workmen's
Compensation; State Highway Patrol

Requested by: Colonel Edwin C. Guy
Commanding Officer
State Highway Patrol

Question: Does G. S. 20-185 prohibit a member of
the State Highway Patrol from claiming
sick leave in lieu of workmen's
compensation during a two-year period of
disability following the occurrence of a
job-related injury?

Conclusion: Officers and members of the State Highway
Patrol are not permitted to claim sick leave
in lieu of workmen's compensation during
the first two years of total or partial
disability resulting from an injury by
accident arising out of and in the course
of official duties.

G. S. 20-185 sets up a mandatory procedure for salary continuation payments to be made to an officer or member of the State Highway Patrol for the first two years of total or partial disability following an injury by accident arising out of and in the course of official duties. During the first year of such disability the full salary shall be paid to him so long as his employment as an officer or member of the State Highway Patrol continues. If such incapacity continues beyond one year from its inception, then the officer or member shall be paid one-half of his established salary during the further continuance of such incapacity to the end of the second year thereof, or until he resumes his regular duties, retires, resigns or dies, whichever first occurs. Thereafter no further payments shall be made to him pursuant to this statutory provision. All such payments are to be paid at the same time and manner as other salaries paid to the State Highway Patrol. G. S. 20-185(b).

The provision of salary continuation established by G. S. 20-185(b) bars all compensation provided for the first two years of such incapacity by G. S. 97-29 and G. S. 97-30 of the North Carolina Workmen's Compensation Act, though the officer or member is entitled to and shall be awarded any other benefits to which he may be entitled under the Workmen's Compensation Act. G. S. 20-185(c); G. S. 97-29 and 97-30.

The period during which salary shall continue to be paid to any officer or member pursuant to G. S. 20-185(b) shall not be charged against sick leave or other leave to which he is entitled under any other provisions of law. G. S. 20-185(d). Thus, as to the period during which payments are made pursuant to G. S. 20-185(b), G. S. 20-185(d) controls in the event there is a conflict with any other statute providing for sick or other leave.

Robert Morgan, Attorney General
Richard B. Conely,
Assistant Attorney General

- - -

27 December 1972

Subject: Administration of Estates; Commissions; Executor; Joint Tenancy with Right of Survivorship; Joint Bank Accounts.

Requested by: Honorable Mary Ruth Nelms
Granville Clerk of Superior Court

Question: In computing the executor's commission in administration of a decedent's estate, may property held by the decedent and nieces and nephews as joint tenants with right of survivorship but actually received by the executor, be considered as part of the total against which maximum commissions may be computed?

Conclusion: Property held by the decedent and nieces or nephews as joint tenants with right of survivorship but actually received by the decedent's executor may be considered for purposes of computing the statutory maximum executor's commission.

The question includes bank passbook accounts, corporate securities and United States Government bonds.

G. S. 41-2.1 controls the incidents of a joint tenancy with right of survivorship in bank accounts. G. S. 41-2.1(a) provides that such accounts may be entered in between any two or more persons pursuant to written agreement. In practice the written agreement is printed on the signature card utilized by the bank for the account.

Of special relevance here is G. S. 41-2.1(b)(3):

"(3) Upon the death of either or any party to the agreement, the survivor, or survivors, becomes the sole owner, or owners, of the entire unwithdrawn deposit subject to the claims of the creditors of the deceased and to governmental rights in that portion of the

unwithdrawn deposit which would belong to the deceased had said unwithdrawn deposit been divided equally between both or among all the joint tenants at the time of the death of said deceased."

G. S. 41-2.1(b)(4) provides that:

"Upon the death of one of the joint tenants provided herein the banking institution in which said joint deposit is held shall pay to the legal representative of the deceased, or to the clerk of the superior court if the amount is less than one thousand dollars (\$1,000.00), in accordance with G. S. 28-68, the portion of the unwithdrawn deposit made subject to the claims of the creditors of the deceased and to governmental rights as provided in subdivision (3) above, and may pay the remainder to the surviving joint tenant or joint tenants. Said legal representative shall hold the portion of said unwithdrawn deposit paid to him and not use the same for the payment of the claims of the creditors of the deceased or governmental rights unless and until all other personal assets of the estate have been exhausted, and shall then use so much thereof as may be necessary to pay any remaining debts of the deceased or governmental claims. Any part of said unwithdrawn deposit not used for the payment of such debts or charges of administration of the deceased shall, upon the settlement of the estate, be paid to the surviving joint tenant or tenants."

As to corporate stock and investment securities, G. S. 41-2.2 expressly permits joint tenancy with right of survivorship *between husband and wife*. G. S. 41-2.2(c) provides for the decedent's interest to be subject to his debts as follows:

"(c) Upon the death of a joint tenant his interest shall pass to the surviving joint tenant. The interest of the deceased joint tenant, even though it has passed to the surviving joint tenant, remains liable for the debts of the decedent in the same manner as the personal

property included in his estate, and recovery thereof shall be made from the surviving joint tenant when the decedent's estate is insufficient to satisfy such debts."

The statute does not authorize creation of a joint tenancy with right of survivorship in corporate stock between persons other than husband and wife.

The general rule as to survivorship is that while "G. S. 41-2 abolished the doctrine of survivorship as a legal incident by operation of law in a joint tenancy, both as to realty and as to personalty, this statute does not operate to prohibit persons from entering into written contracts as to land, or oral or written contracts as to personalty, so as to make future rights of the parties depend upon survivorship." 2 Lee, *North Carolina Family Law*, § 126, p. 117.

"A mere labeling of the transaction as a joint account with right of survivorship cannot be relied upon as a sufficient contract to accomplish the desired result of guaranteeing the right of survivorship. The intention of the parties to create a joint tenancy with the right of survivorship in the survivor must be spelled out in an express contract." 2 Lee, *North Carolina Family Law*, § 126, p. 120, citing *Buffaloe v Barnes*, 226 N.C. 313, 38 S.E.2d 222; 226 N.C. 778, 39 S.E.2d 599 (1946); *Bowling v Bowling*, 243 N.C. 515, 91 S.E.2d 176 (1956).

Accordingly, in the absence of an express contract creating a joint tenancy with the right of survivorship between the decedent and nephews or nieces, no survivorship rights would obtain and the property would be treated as if held by tenants in common.

As to the basic question of whether all or part of property held as a joint tenancy with right of survivorship may be included in computing the maximum statutory executor's commissions, the pertinent statute is G. S. 28-170, which states in part:

"Executors . . . shall be entitled to commissions to be fixed in the discretion of the clerk not to exceed five percent upon the amount of receipts, including the value of all personalty when received,"
(*Emphasis added.*)

Construing together the provisions of G. S. 41-2.1 and G. S. 28-170, we find that the executor's commissions may be computed against the value of all personal property received by the executor on behalf of the estate. G. S. 41-2.1(b)(4) provides that the banking institutions will pay over to the personal representative the portion of the unwithdrawn deposit made subject to the claims of creditors as provided in G. S. 41-2(b)(3).

The language of the last sentence of G. S. 41-2(b)(4) contemplates that charges of administration will be paid out of the unwithdrawn deposit.

Thus, in this case, one-half of the unwithdrawn balance of bank accounts at the time of the decedent's death may be considered in computing the commission of the executor. As to the corporate securities, if held pursuant to an express contract creating survivorship rights, one-half would be included in the total sum against which the executor's commission is computed. In the absence of an express contract creating survivorship rights, the property would be treated as a tenancy in common.

Robert Morgan, Attorney General
Sidney S. Eagles, Jr.,
Assistant Attorney General

- - -

27 December 1972

Subject: Municipalities; Ordinances; Parking Meters;
City of Raleigh

Requested by: Mr. Broxie Nelson
Raleigh City Attorney

Questions: (1) Has the General Assembly through G.
S. 160A-301 and other laws delegated to
cities of this State the authority to regulate
on-street parking by means of

coin-operated meters and to require, by criminal penalty, a motorist parking in a metered space to keep the space's meter in continuous operation for the entire period he is so parked?

(2) If the General Assembly has through G. S. 160A-301 and other laws delegated to cities of this State the authority to regulate on-street parking by means of coin-operated meters and to require by criminal penalty a motorist parking in a metered space to keep the space's meter in continuous operation for the entire period he is so parked, are such delegation, exercise of authority and imposition of criminal penalty within the limits of the United States and North Carolina Constitutions in light of *State v. Scoggins*, 236 N.C. 1, *State v. Scoggins*, 236 N.C. 19, and *Britt v. Wilmington*, 236 N.C. 446, and other cases.

Conclusions:

(1) Yes.

(2) Yes.

As to Conclusions (1) and (2), such delegation of power must be implemented by proper ordinance and the meters must be so designed or regulated to require a single coin to put such meter in operation for the time limit prescribed by the ordinance, and the coins required to activate the meter must not be more than ten cents per hour or at a rate equivalent thereto.

G. S. 160A-301 reads as follows:

"§ 160-301. *On-street parking.*--A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges. To enforce an on-street parking ordinance, a city may install a system of parking meters and make it unlawful

to park at a metered location unless the meter is kept in continuous operation. The meters may be actuated by coins or tokens, but no more than ten cents shall be required to actuate an on-street parking meter for one hour. The proceeds from the use of parking meters shall be used either (i) to defray the cost of enforcing and administering traffic and parking ordinances and regulations, or (ii) to acquire, construct, reconstruct, improve, extend, or operate off-street parking facilities. Parking meter revenues may also be pledged to amortize bonds or other evidences of debt issued under the Local Government Revenue Bond Act. Nothing contained in Public Laws 1921, Chapter 2, Section 29, or Public Laws 1937, Chapter 407, Section 61, shall be construed to affect the validity of a parking meter ordinance or the revenues realized therefrom."

Enabling legislation contained in G. S. 160A-301 does not contain the language relative to "congested areas" and "public convenience and safety" as contained in G. S. 160-200(31) prior to the revision of Chapter 160 of the General Statutes under which the cases of *State v. Scoggins*, 236 N.C. 1, *State v. Scoggins*, 236 N.C. 19, and *Britt v. Wilmington*, 236 N.C. 446, were decided. The fact still remains, however, that a city is a creature of the legislature having no inherent power and must exercise delegated powers strictly within the limitations prescribed by the legislature.

Under G.S. 160A-301, a city to enforce an on-street parking ordinance may install a system of parking meters and make it unlawful to park in a metered location unless the meter is kept in continuous operation.

In our opinion the current wording of the enabling legislation is not prohibited by the language of *Scoggins, supra*, wherein the court held that to be enforceable by a criminal penalty, the maximum length of time a motorist may leave his vehicle in a parking space on a public street must be fixed by law and not dependent upon the amount of money deposited in the meter.

The ruling in *Scoggins* does not preclude, however, a city from

establishing shorter parking periods for one hour and two hour parking spaces if such is done under non-penal provisions.

From the holdings in the *State v. Scoggins* cases, *supra*, and *Britt v. Wilmington, supra*, we conclude that if a city wishes to enforce by criminal sanctions parking meter ordinances, the only practical method is by the installation of single coin meters which when activated indicate the maximum period of time a vehicle may remain parked under the ordinance.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

INDEX TO ATTORNEY

GENERAL OPINIONS

(Cumulative Since July 1, 1968)

A

ABANDONMENT (See Social Services;
Abandonment)

ABORTIONS

Age of Consent	41/730
Consent of Minor Not Necessary	41/709
Incest; No Necessity for Report in Seven Days	40/144
Jurisdiction; District Courts	40/116
Sufficiency of Consent of County Director of Social Services	41/862

ABC ACT (For Opinions After January 1, 1972, See
"Intoxicating Liquors")

Advertising Beer; Power of State Board to Regulate	41/76
Advertising Beer and Wine; Power of State Board to Regulate	40/1
Alcoholic Beverages Defined; Consumption of Beer on Street under G. S. 18-51(6)	40/2
Beer; Possession; Restrictions on Possession by One Who is Not Owner	41/573
Beer; Privilege License Taxes; Out-of-Town Beer Wholesaler Doing Business in Town	40/864
Beer; Sale, What Constitutes; Power of State Board to Regulate	40/3
Beer and Wine; Authority of County ABC Board and Board of County Commissioners to Regulate or Prohibit the Sale of Wine; G. S. 18-116.2; G. S. 18-119, <i>et seq.</i> ; G. S. 18-139	41/285

Beer and Wine; Authorization to Sell 14% Wine	40/22
Beer and Wine; Effect of G. S. 18A Upon the Sale of Fortified Wines in Cumberland County, a Dry Area; Authority of State ABC Board to Issue Fortified Wine Permits	41/616
Beer and Wine; Elections; Circulation of Petition and Return Within 90 Days; Discretion of County Board of Elections to Extend Time	40/4
Beer and Wine; Elections; Holding County-wide Election after Municipal Election; Time of Holding	40/5
Beer and Wine; Elections; Petition; Qualified Signer	40/6
Beer and Wine; Elections; Sale Not Prohibited in G. S. 163-272	40/7
Beer and Wine; Hours of Sale and Consumption; Eastern Standard Time	40/7
Beer and Wine; Manufacture of Wine in a Dry County	40/9
Beer and Wine; Regulation of Sale in Rockingham County; G. S. 18A-33; Ch. 1076, Session Laws of 1945; Ch. 918, Session Laws of 1947; G. S. 18A-38	41/607
Beer and Wine; Sale; Authority of Local Board to Restrict Wine Sales	41/630
Beer and Wine; Sale; Regulation by Counties and Municipalities	41/484
Beer and Wine; Sale of Sweet Wine in City of Monroe; Chapter 541, Session Laws of 1963	41/100
Beer and Wine; Sunday Sales; Regulation by County	40/13
Beer and Wine; Sunday Sales; State Board Regulations; Power of Municipalities	40/15
Beer and Wine; Transportation and Sale by Wholesaler on Sunday; Authority of State Board	41/704
Board; Conflict of Interest; Banks; Deposit of Funds in Bank of Which Board Chairman is President	40/559

Board; Conflict of Interest;	
Disqualification From Board by Reason of Relationship; G. S. 18-43	41/330
Board; Powers With Regard to Employment of ABC Officers; Requirement of Expenditure of Percentage of Total Profits for Education and Rehabilitation	41/610
Board; Term of Chairman Fixed by G. S. 18-41	40/18
Brown-Bagging Permits; Civic Club Holding Dance in Warehouse Open to Public	40/16
Contracts; Authority of County Board to Execute Lease Agreement	40/17
Disposition of Liquor Stolen from County Store; G. S. 18-6; G. S. 18-13	41/269
Distribution of Funds for Law Enforcement Purposes; City of Whiteville	40/19
Malt Beverages; Definition in Labelling as "Malt Liquor"	41/73
Officers Assisting in Riots; Power	40/552
Permits; Discretion of State Board in Issuing	41/505
Permits; Qualification of Applicant	40/9
Permits; Revocation Hearings; Question of Suitability of Person or Place to Hold a Permit	41/50
Permits; Revocation Without a Hearing; Authority of the State Board of Alcoholic Control	40/10
Profits for Education and Rehabilitation; General and Local Act Requirements	41/610
Taxation; Law Enforcement Expense Not Deductible to Compute "Net Profit"	41/141
Taxation; Manufacturer's License; Beer Brewed by Resident Brewer and Shipped into State for Transshipment to Dealers in this State	40/20
Taxation; "Net Profit" Limitation; G. S. 18-85(a); G. S. 18-85.2	41/144

Transportation; Beer and Wine; Transportation and Sale by Wholesaler on Sunday; Authority of State Board	41/704
Transporting Liquor; Taxicab	40/21
Wine (See ABC Act; Beer and Wine)	

AD VALOREM TAXES (See Taxation; Ad Valorem)

ADMINISTRATION OF ESTATES

Administrator; Final Accounts of Co-Administrators	40/28
Administrator; Necessity of; Bond Requirements; Joint Bank Accounts	40/23
Administrator; Necessity of; Disbursement of Funds Held by Clerk of Court Pursuant to G. S. 28-68.2	41/383
Administrator; Right of Minor Widow to Nominate Administrator	40/26
Ancillary Administration; Money Held in Trust in North Carolina Banks for Deceased Beneficiary; Release to Trustee	41/54
Bond; Executors, Administrators and Trustees	40/29
Bond; Substitute or Successor Administrator	40/28
Commissions; Executor; Joint Tenancy with Right of Survivorship; Joint Bank Accounts	42/138
Fees; Clerk of Court; Absence of Authority for the Clerk to Waive Fees When Welfare Check Received	40/101
Funeral Expenses; Payment as Priority and General Creditor Claim	40/30
Guardians; Appointment of	40/31
Guardians; Appointment of Child's Guardian When Parents are Living	41/14
Guardians; Appointment of Child's Guardian When Parents are Living for School Assignment Purposes	41/5
Guardians; Clerk's Duty on Final Accounting by Guardian	40/32

Intestacy; Distribution of Intestate's Estate Among Brothers and Sisters and Their Legal Descendants	41/184
Joint Bank Account; Joint Tenancy with Right of Survivorship	42/138
Joint Bank Account; Power of Clerk to Collect and Distribute Funds	40/33
Liens; Statute of Limitations; Welfare	40/700
Safety Deposit Box Opening; Clerk May Not Designate Bank Officer as His Representative	41/44
Surety on Bond of Administrator, Executor and Collector	40/34
Testamentary Trusts; Accounts; Effect Given Exemption in Will as to Filing Periodic Accounts; Compelling Accounting	41/757
Widow's Allowance; Award Where Deceased Not a North Carolina Resident	40/35
Wills; Attestation; Attestation Clause Not Required for Probate	41/177
Wills; Holographic Wills; Executors and Administrators	40/36

ADMINISTRATIVE LAW

Alcoholic Control, State Board of; Permit; (See ABC Act; Permits; or Intoxicating Liquor; Permits)	
Definition of "Administrative Departments, Agencies and Offices" of the State Within Meaning of Proposed Constitutional Mandate to Reduce Number of	40/738
Employment Security Act; Persons Other Than Members of State Bar Prohibited from Practicing Law	40/39
Employment Security Commission; Filing of Claims & Claim Procedure; Practice of Law by Laymen, Consultant Associations and Corporations Before the Commission and Its Hearing Officers & Agents; Authority of Laymen, Associations and Consultant Corporations to File Separation Notices, Noncharging Instruments and to Protest or	

Resist Claims Filed by Employees of an Employer Covered by Employment Security Law; etc.	41/650
Evidence; Personnel Board; Applicability of G. S. 143-317	40/40
Evidence; Relevancy of Evidence Regarding Beer or Wine Permittee's Suitability for Various Premises	41/50
Hearing; License Revocation Without; Authority of State Board of Alcoholic Control	40/10
Hearing; Requirement of; Driver's License Suspension for Unpaid Judgment	41/420
License Revocation Without a Hearing; Authority of State Board of Alcoholic Control	40/10
Rules of Civil Procedure; Inapplicability to Administrative Hearings; Appointment of Guardian Ad Litem by Industrial Commission	40/41

ADMINISTRATORS (See Administration of Estates; Executors and Administrators or Administration of Estates; Administrators)

ADOPTION (See Social Services; Adoption)

AGENTS, INSURANCE (See Insurance; Agents)

AGRICULTURE

Bread Products; Artificially Colored Shortening Chips in Refrigerated Dough Biscuit Products; G. S. 106-225.3	41/674
Chickens; Handler's Act; Not Applicable to Broiler Chicken "Grow-Out Contracts"	40/43 40/723
Public Records; Compulsory Meat Inspection Act; G. S. 132-1, 106-549.5, <i>et seq.</i>	41/468
Seed Company; Inventory Not Exempt from Ad Valorem Taxes	41/56

AIR AND WATER RESOURCES (See Pollution; Water and
Air Resources, or Pollution; Air)

AIRPORT AUTHORITY

Indebtedness; Acquisition of Real Estate
for Site; Execution of Note and Deed
of Trust; No Authority Without Vote
of People 40/44

Police; Power to Appoint a Police Force
With Full Police Powers;
G. S. 63-48; G. S. 63-53(2) 41/910

AIRPORTS

Airplanes; Tax Situs 41/324

Passenger Boarding Fee or Tax 40/828
41/877

State Highway Commission; Ordinances;
Aircraft Landing Area, Regulation
of 41/25

ALCOHOL CHEMICAL TEST (See Motor Vehicles;
Drunken Driving)

ALCOHOLICS (See Mental Health; Alcoholics)

ALDERMEN, BOARD OF (See Municipalities;
Aldermen, Board of)

ALIMONY

Payments as Tax Deduction for Supporting
Spouse 41/70

ALIMONY AND SUPPORT

Enforcement by Contempt Proceedings 40/654

AMBULANCES

Elections; Counties; No Authority for County
to Hold Any Election Not Authorized
by Statute 40/74

Liens for Service; Garnishment and Attachment;
Collection 41/134

ANNEXATIONS (See Municipalities; Annexation)

APPROPRIATIONS (See specific agency involved or
State Departments, Institutions &
Agencies; Appropriations)

ARCHITECTS

Professional Corporation Act (Chapter 55B);
Applicability to Architectural
Corporations in Existence Prior to
June 5, 1969 40/58

ARMED FORCES

Taxation; Ad Valorem; Situs; Residence;
Domicil; Effect of Marriage to Nonresident
Serviceman Upon Taxation of Personalty
Owned by Woman Who Was Legal Resident
of County Before Marriage 40/825

Taxation; Sales Tax; Liability for
Payment of Use Tax on
Motor Vehicles and Other Tangible
Personal Property Purchased Outside N. C.
for Use in This State by Nonresident
Servicemen Stationed in N. C.; Soldiers'
and Sailors' Civil Relief Act 40/887

ATTESTATION OF WILLS (See Administration of Estates;
Wills, etc.)

ATTORNEY GENERAL

Charitable Trusts; Termination of "Private
Foundation" and Distribution of
Assets 41/828

ATTORNEYS

Appointment in Petty Misdemeanor Cases 41/256

Employment Security Commission; Practice
Before Constitutes Practice of Law 40/39

Fees; Allowance by Magistrate Under
G. S. 6-21.1 40/136

Redevelopment Commission; Attorney's
Fees 40/637

Social Services; Payments by State
Board for Services to Welfare
Recipients 40/677

Swearing in; District Judge has no
Authority

42/82

AUTOMOBILES (See Motor Vehicles)

B

BAIL (See Criminal Law & Procedure; Bail)

BANKS

Insurance Business Through Credit Card Facilities	40/328
Interest; Savings and Loan Association; First Mortgage Loans; Mortgages of Less than Ten Years	40/54
Joint Accounts; Common Law Incidents	41/352
Joint Bank Accounts; Administration of Decedent's Estate	40/33
National Banks; Real Estate Excise Stamp Tax; Liability for; Public Law 91-156, 91st Congress, H. R. 7491	40/873
National Banks; Sales Tax; Liability for; Public Law 91-156, 91st Congress, H. R. 7491	40/890
Officers; Conflict of Interest; ABC Board Deposit of Funds in Bank of Which Chairman is President	40/559
Private Detectives; Bank Employees' Investigation of Credit Card Fraud	40/378
Real Estate Excise Stamp Tax; Exemptions	40/872
Taxation; Ad Valorem; Application of Tax to Property Leased by Banks	41/41
Taxation; Ad Valorem; Bank Vault Doors, Vault Ventilators, Safe Deposit Boxes, Night Depositories	41/558
Trust Account for Deceased Nonresident; Ancillary Administration of Estate	41/54

BAR ASSOCIATION, NORTH CAROLINA

Mental Retardation; Council on Mental
Retardation and the Mental
Retardation Committee of the North
Carolina Bar Association; Powers
and Duties

40/389

BEER AND WINE (See ABC Act or Intoxicating
Liquors)

BEGGING (See Solicitation)

BLIND (See Social Services; Blind)

BLIND COMMISSION (See State Departments,
Institutions & Agencies; Blind Commission)

BLOOD (See Motor Vehicles as to blood tests
for drunken driving)

Test; Consent; Prisons and Prisoners

40/533

Test for Alcoholic Content; Persons

Qualified to Give

40/429

BOATS (See "Motor Vehicles; Boats")

BOILER INSPECTION (See Labor; Boiler Inspection)

BONDS

Administrator; Bond of Substitute or
Successor Administrator

40/28

Criminal; Clerk's Commission Not Deductible
from Principal Under Terms of Order in
This Case

41/470

Election; Promotion of by County

40/75

Executors, Administrators and Trustees

40/29

Sureties; Administration of Estates; Surety
on Bond of Administrator, Executor
and Collector

40/34

BREAD

Artificially Colored Shortening Chips in
Refrigerated Dough Biscuit Products;
G. S. 106-225.3

41/674

BUILDING CODE

Adoption by Local Governmental Subdivision; Exceptions from the Code	40/68
Electrical Code; Authority of City of Kinston to Apply its Fee Schedule Against the County of Lenoir for Electrical Inspections of a County Hospital Located Outside but Within One Mile of the City Limits	41/93
Electrical Code; Right of City to Vary State Building Code	40/458
Gasoline Pumps; Sale of Gas from Unattended Pumps	41/282
Master Plumber (Licensed as a Plumbing Contractor) Must Supervise Work	41/477

BUILDING PERMITS

Construction of State Buildings on State-Owned Property	40/735
--	--------

BUSINESS AND COMMERCE

Banks; Savings and Loan Associations; Joint Bank Account; Common Law Incidents; G. S. 41-2.1; G. S. 41-2	41/352
Building Code; Gasoline Pumps; Sale of Gasoline from Unattended Gasoline Pumps; G. S. 143-138	41/282
Chain Stores; Privilege License Tax; Montgomery Ward Sales Agency	41/33
"Cooperative"; Use of Word In Assumed Name	40/45
Credit Unions; Interest; Applicability of Chapter 1303, 1969 Session Laws (Interest Rates) to Credit Unions	40/48
Credit Unions; Interest; Maximum Interest Chargeable; Installment Payments Not Mandatory	40/49
Credit Unions; Investment of Funds; ICU Government Securities Program	40/50
Domestication of Foreign Professional Corporation	40/46

Employment Agency; Privilege License Tax Inapplicable Where Only Contact With Municipality is by Telephone	41/82
Foreign Corporation "Doing Business" in North Carolina	40/51
Foreign Corporations; Professional Corporation Act; Domestication of Foreign Professional Corporation	40/46
Funeral and Burial Trust Funds; Payments to Funeral Home for Future Burial Needs	40/51
Funeral and Burial Trust Funds; Pre-Need Sale of "Garden Mausoleums", "Interment Crypts" and "Lawn Crypts"	40/52
Interest (See Interest)	
Laundry and Dry Cleaning; Privilege License Tax	41/80
Professional Corporation Act; Applicability to Domestic & Foreign Corporations	41/60
Professional Corporation Act (Chapter 55B); Applicability to Architectural Corporations in Existence Prior to June 5, 1969	40/58
Professional Corporation Act (Chapter 55B); Domestication of Foreign Corporations	41/934
Savings and Loan Associations; Land Development Business	40/59
Small Loans; Consumer Finance Act; Motor Vehicle Lenders; Multiple Loans	40/60

C

CABLE TELEVISION (See Municipalities; Franchises)

CAPITAL BUILDING AUTHORITY

Architects and Engineers; Selection of

Architects and Engineers for State Agencies and Institutions	40/732
CEMETERIES	
Lots; Real Estate Excise Stamp Tax	40/872
CHARITIES (See Solicitation)	
CHICKENS (See Agriculture; Chickens)	
CHILD OR CHILDREN (See Infants and Incompetents or Social Services; Juveniles)	
CHIROPRACTORS (See Licenses & Licensing; Chiropractors)	
CIGARETTES	
Privilege License Tax; Vending Machines	40/856
Privilege License Tax; Vending Machines; City and Town Tax on Cigarette Vending Machine	40/858
CITIZENSHIP	
Pardon; Granting of Pardon Does Not Restore Citizenship	40/162
Parole; "Date of Discharge" Refers to Parole Discharge	41/426
CIVIL DEFENSE	
Power of Local Political Subdivisions	40/62
Power of Local Political Subdivisions in Civil Defense or Riot and Civil Disorder Emergencies	41/2
CIVIL PROCEDURE (See specific headings such as Injunctions or Administrative Law or see major heading "Courts".)	
CIVIL RIGHTS ACT OF 1964	
Equal Employment Opportunities for Women; Not Applicable to State Employees	40/741

Women; Hours of Work for 40/363

CLAIM AND DELIVERY

Clerks of Court; Magistrates; Justification of
Defendant's Sureties;
G. S. 1-479 41/628
Jurisdiction When Defendant Resides Outside
County Where Suit is Instituted 40/130
Notary Public Taking Oath of Sureties on
Plaintiff's Undertaking in a Claim and
Delivery Action 40/64

CLEAN WATER BOND ACT OF 1971

Application for Grants; Construction Begun
Before Adoption of Administrative
Rules and Regulations 42/16

CLERKS OF SUPERIOR COURT (See Courts; Clerk of Superior Court)

CLOSED SHOP (See Labor)

COLLECTIVE BARGAINING (See Labor; Collective Bargaining)

COMMISSIONERS' DEEDS

Taxation; Subject to Real Estate Excise Stamp
Tax 41/204

COMMUNITY COLLEGES (See Education; Community Colleges)

COMPANY AND SPECIAL POLICE

Arrest Powers of; Hot Pursuit 40/164
Arrest Powers of; Resisting Arrest 40/152
Blue Light and Sirens 40/391
Police; Power of Arrest; G. S. 15-46 and
15-47 41/775

COMPULSORY ATTENDANCE LAW (See Education; Compulsory Attendance Law)

CONDEMNATION

Education; Condemnation for School Site; Acquisition of Land by Purchase as Affecting the Right to Condemn	40/216
--	--------

CONFLICT OF INTEREST (See Public Officers & Employees; Conflict of Interest)

CONSERVATION AND DEVELOPMENT

Fishing Laws; Authority of Local Government to Regulate Fishing in Coastal Fishing Waters	41/642
Fishing Laws; Fishery Licenses; Suspension or Revocation; Second or Subsequent Conviction of Fisheries Laws	41/767
Fishing Laws; Fishing From Highway Bridges; State Regulation of	40/65
Oil and Gas Conservation Act; "Commercial Quantities" as Used in G. S. 113-382 Defined	40/67

CONSOLIDATION AND MERGER OF SCHOOL UNITS (See Education; Consolidation)

CONSTITUTION

Article V, Section 2; Necessary Expenses for Counties; Construction of Bleachers for School Athletic Field	41/785
Article VI, Section 8	41/348
Public Purpose; Municipal Corporations; Parks; Reverter Clause in Deed Affecting Public Purpose of Park Under Constitution, Article V, Section 3	40/494

CONSTITUTIONAL LAW

Religion; Prayers in Schools	41/802
Retroactive Operation of Constitutional Amendments; Disqualification for Office; Article VI, Sec. 8, N. C. Constitution	41/348

CONSUMER FINANCE ACT

Small Loans; Motor Vehicle Lenders; Multiple Loans	40/60
CONTEMPT (See Criminal Law & Procedure; Contempt) Industrial Commission; Contempt Powers of Deputy Commissioners	41/403
CONTRACTS, PUBLIC (See Public Contracts)	
CONVEYANCE By Operation of Law; Commissioners' Deeds Not	41/204
COOPERATIVE Use of Word in Assumed Name in Violation of General Statutes	40/45
CORONERS (See Public Officers & Employees; Coroners and Public Officers & Employees; Medical Examiners & Coroners) Medical Examiners; Investigation of Deaths; Authority to Remove Dead Body	41/117
CORPORATIONS Dissolution; Unpaid Ad Valorem Taxes Dissolved; Reporting Income for Intangibles Tax Purposes Foreign Corporation "Doing Business" in North Carolina Foreign; Professional Corporation Act; Applicability of Act Foreign; Professional Corporation Act; Domestication of Foreign Professional Corporation Taxation; Bonuses Not Paid in Taxable Year May Not Be Deducted From Accounts Receivable in Computing Intangibles Tax	40/827 40/848 40/51 41/60 40/46 41/208
COSMETIC ARTS (See Licenses & Licensing; Cosmetic Arts)	

COUNCIL OF STATE (See "State Departments,
Institutions & Agencies; Council of State")

COUNCIL ON MENTAL RETARDATION (See Mental
Retardation)

COUNTIES

Boats; Control of Boat Wake; Authority of County to Pass Ordinance	41/940
Bond Resolution; Expenditure of Bond Funds in Connection With Community Colleges	41/682
Building Code; Adoption by Local Governmental Subdivision; Exceptions from the Code	40/68
Buildings; Removal of Social Services Personnel and Equipment to New Quarters; Inapplicability if G. S. 153-9(9) Requiring a Unanimous Vote of the Commissioners and a Specified Published Notice	41/21
Change of Name; No General Authority Unless Counties are Being Consolidated or Merged	41/774
Civil Defense; Power of Political Subdivision	40/62
Civil Defense Powers; Civil Defense or Riot and Civil Disorder Emergencies	41/2
Clerk to Board of County Commissioners; Register of Deeds	41/194
Commissioners; Compensation; Fixing Compensation of County Commissioners Pursuant to G. S. 153-13	42/132
Commissioners; Filling of Vacancy; Appointment for Unexpired Term; G. S. 153-6	41/622
Contracts; Bidding; Changes in Plans After	41/392
Contracts; Competitive Bidding; Advertisement	40/459
Contracts; Lease of Equipment with Option to Purchase; Competitive Bidding Requirements	41/504
Contracts; Purchase of Apparatus and Equipment; Single Bid	41/527

Contracts; Separate Contracts Required for Certain Portions of Work Under Public Building Contracts	40/550
Courthouses; Change of Site; Unanimous Vote of Commissioners	40/69 40/71
Courthouses; Construction of Second Jail	41/226
Courthouses; Securing Proper Facilities and Assignment Thereof	41/794
Courts; Costs; Counties to Furnish Office Space and Furniture to Magistrates	40/112
Courts; Costs; County Hospital Within Exemption From Advance Costs in G. S. 7A-317	41/232
Courts; Costs; Liability of Counties to Furnish Furniture, Fixtures, and Books; Liability for Costs in Indigent Appeals	40/110
Dogs; Damage Fund; Authorization to Spend Surplus	40/71
Dogs; Dog Taxes; Statutes of Limitations	40/73
Elections; Ambulance Services; No Authority for County to Hold Any Election Not Authorized by Statute	40/74
Elections; Board of Elections; Member May Not Serve as Executive Secretary	41/577
Elections; Expending of Funds to Promote Bond Issue	40/75
Elections; Registration Records; Board of Commissioners Required to Provide Adequate Funds for Safekeeping of Records	40/76
Elections; Straw Vote; No Authority for Employees; Removal of County Employees When Term Not Fixed by Statute	42/26 41/230
Finances; Social Services Payments to County Treasury	41/329
Finances; Special Purpose Tax; Construction of County Building	40/76
Fire Departments; Expenditure of Tax Funds	41/210
Fiscal Control Act; Budget Preparation;	

Surplus Funds; Use of in Preparing Budget	40/78
Fiscal Control Act; Special Tax Levy; Purpose Fulfilled; Discontinuance of Levy and Transfer of Surplus into General Fund	40/78
Garbage Collection and Disposal; Authority to Levy Taxes For Garbage Collection and Disposal	41/756
Garbage Dump; Operation of with Municipality	40/79
Hospital Districts; Levy of Tax	41/402
Hospital; Gasoline Tax Refunds	41/306
Industrial Development Commission; Performing Duties Through Chamber of Commerce	40/80
Jails; Sites for County Buildings; County Finances; Transfer of Funds	41/226
Legal Defense of; Authority of Board of Commissioners to Pay Attorneys' Fees in Civil Action Against Sheriff	40/593
Meetings; Special; Notice Requirement	40/81
Mental Health; Authority Over Mental Health Center	41/778
Motor Vehicles; Authority of Counties to Enact Ordinance for Disposal of Abandoned or Junked Vehicles	40/82
Necessary Expenses; Bonds; Issuance to Purchase Voting Machines	40/84
Necessary Expenses; Construction of Bleachers for School Athletic Field; N. C. Constitution Article V, Section 2	41/785
Officers' Salaries; Authority to Increase in Election Year	40/569
Parking; Ordinance-Making Authority; Regulation of Parking on County-Owned Properties	40/85
Recreation Districts; Article 28, Chapter 153 (G. S. 153-368, <i>et seq</i>)	42/74
Rescue Squads; Lease of Premises for Rescue Squad Purposes	40/88

Salaries of Officers; Conflict in Local and General Acts	41/22A
Salary of Election Board Secretary; Authority of County Commissioners in Budget Appropriations	41/40
Salary of Social Services Director; Applicability of State Personnel Act; Authority of Board of Commissioners	41/696
Sale or Lease of Property to Chamber of Commerce; Sale of Leases at Less than Fair Market Value; Mortgage of County Property	40/88
Sale or Rental of Property at Less than Fair Value	40/89
Sand Dune Protection; Authority of a County to Protect the Sand Dunes Along the Outer Banks in the Entire County, Including Any Municipality Located Therein	41/451
Sheriffs; Uniform Jail Fees; Payment by County of Jail Fees to Sheriff	40/90
Social Services; Guaranteeing Availability of Beds in Nursing Homes Unlawful	41/555
Social Services; Obligation of Counties; Method of Raising Revenue	41/264
Social Services; Pharmacies; Authority of State Board of Social Services to Make Payments to County-Owned Pharmacies for Drugs Dispensed to Welfare Recipients	40/704
Taxation; Necessary Expenses; Construction of Bleachers for School Athletic Field; N. C. Constitution Article V, Section 2	41/785
Taxation (See Taxation under specific tax heading)	
Water and Sewage; Sewage Treatment Facility; Federal Funds	40/91
Water and Sewage Systems; Authority to Improve and Maintain Sewage Drains Extending Beyond Municipal Limits	41/12
Water and Sewer Systems; Expenditure of Non-Tax Funds; G. S. 153-9(46); G. S. 153-11.2	40/92

Water Resources Projects; Authority to Contract for With Secretary of Army	41/522
Water Systems; Sewage Systems; Power to Establish	40/94
Zoning; Elections; No Authority for Commissioners to Hold a "Straw Vote" Election	40/95
Zoning; No Authority Under G. S. 153-9(55); Authority Under Articles 20 and 20B of Chapter 153 of the General Statutes	40/95

COURT REPORTERS

Taxation; Levy of Privilege License Tax by Municipality	41/104
--	--------

COURTS

Alimony and Child Support Actions; Enforcement by Contempt Proceedings	40/654
Appeals; Clerk's Order of Involuntary Commitment of Mentally Ill or Inebriate	41/219
Appeals; Criminal; District to Superior Courts; Jurisdiction of Superior Court Over Misdemeanors; G. S. 7A-271(a)(3), (4)	41/247
Appeals from District to Superior Courts; Jurisdiction of Superior Court Over Lesser Included and Related Misdemeanors	40/145
Appearance Bonds; G. S. 24-5 Regarding Interest Not Applicable on Forfeiture	41/809
Child Abuse; Jurisdiction	40/666
Civil Procedure; Tax Foreclosure Suits; Judgment by Default Final	40/99
Clerk of Superior Court; Assistant and Deputy Clerks; Power to Issue Warrants	40/192
Clerk of Superior Court; Assistant and Deputy Clerks Power to Issue Warrants for Drugs	40/191
Clerk of Superior Court; Authority of Clerks, Assistants, and Deputies to Fix and Take Bail in Counties Under the New Court System	40/156

Clerk of Superior Court; Costs; Bail, Bail Bonds; G. S. 7A-308(15); Commission by Clerk of Superior Court on Interest Earned by Posted Cash Bond	41/470
Clerk of Superior Court; Deposition; Authority of Clerk to Order Deposition to Prepare a Complaint	41/618
Clerk of Superior Court; Duty of Clerk Upon Receiving Notice of Appeal from District Court to Superior Court in Criminal Action	40/101
Clerk of Superior Court; Fees; Absence of Authority for the Clerk to Waive Fees When Welfare Check Received	40/101
Clerk of Superior Court; Guardians; Appointment of Child's Guardian When Parents Are Living	41/14
Clerk of Superior Court; Guardians; Appointment of Child's Guardian When Parents Are Living for School Assignment Purposes	41/5
Clerk of Superior Court; Guardians; Final Accounts; Ward Attaining 18	41/450
Clerk of Superior Court; Inebriate or Mentally Ill Persons; Authority of Clerk to Direct the Sheriff to Take into Custody	42/43
Clerk of Superior Court; Joint Bank Account; Power of Clerk to Collect and Distribute Funds	40/33
Clerk of Superior Court; Judgments; Filing of Civil Actions Instituted by Agents; Entries of Payment and Satisfaction of Judgments of Record by Agents	40/102
Clerk of Superior Court; Judgments; Receipt of More than \$1,000 for Minor	40/317
Clerk of Superior Court; Judicial Sale; Authority of Clerk to Accept Upset Bid More than Ten Days After Filing of Report of Sale	40/105
Clerk of Superior Court; Mental Examination; Authority to Order Physicians to Examine Allegedly Mentally Ill Person	41/35

Clerk of Superior Court; Mental Patients; Release of Information to Clerk	41/666
Clerk of Superior Court; Partition of Real Property; Authority to Impose Restrictive Covenants in Deeds in Sale for Partition of Real Property; G. S. 46-30	42/1
Clerk of Superior Court; Probation Revocation; Authority of Clerk in County of Original Jurisdiction to Issue Commitment	41/847
Clerk of Superior Court; Public Records; Authority to Compel Production of S. B. I. Records	40/730
Clerk of Superior Court; Restoration of Competency of Mental Incompetent	40/320
Clerk of Superior Court; Safety Deposit Box Opening; Clerk May Not Designate Bank Officer as His Representative	41/44
Clerk of Superior Court; Vacancies; Term of Office	41/686
Contempt Powers; Alimony and Child Support Actions	40/654
Contempt Powers; Deputy Commissioners of the Industrial Commission	41/403
Continuances in Criminal Cases; Time of Granting	41/571
Costs; Advance; Counties and Municipalities	40/107
Costs; Advance; Exemptions of Counties and Municipalities; County Hospital As Instrumentality of the County	41/232
Costs; Appeal from District to Superior Court	40/108
Costs; Counties Required to Pay Cost of Transcript Furnished Solicitor	40/108
Costs; Counties Required to Pay Transcription Cost of Indigents; Court Reporter's Compensation	40/109
Costs; Counties to Furnish Furniture, Fixtures and Books; Liability for Costs in Indigent Appeals	40/110
Costs; Counties to Furnish Office Space and Furniture to Magistrates	40/112

Costs; Expert Witness Fees; Basis of Award	40/113
Costs; Jail; Sheriffs	40/114
Counties to Furnish Courtroom and Related Judicial Facilities	40/115
Courthouse; Change of Site	40/69 40/71
District Courts; Criminal Law; Misdemeanors; Judgments; Waiver; Constitutional Law	41/857
District Courts; Jurisdiction; Amount in Controversy; Including Amount Counterclaimed for Purposes of Determining Jurisdiction	41/300
District Courts; Jurisdiction; Declaratory Judgments; Abortion	40/116
District Courts; Juvenile Division; Abandonment Proceedings	40/642
District Courts; Juvenile Jurisdiction	41/410
District Courts; Juveniles; Criminal Offenses; Commitments to the Board of Youth Development When the Juvenile is Over 16 Years of Age	42/69
District Courts; Juveniles; Probation	41/350
District Courts; Sessions; When Does a Session End?	40/117
District Courts; Small Claims; Suits Brought by Agents of Plaintiff; Cancellation of Judgments by Agent of Plaintiff	40/118
District Courts; Traffic Offenses, Uniform Schedule; No Alteration Permitted	40/119
District Courts; Venue in Juvenile Cases	40/669
Evidence; Admissibility of Written Summary or Statement by Welfare Department or Family Counselor	40/120
Facilities; Securing Proper Facilities and Assignment Thereof	41/794
Judges; Commitment of Chronic Alcoholic to Institution	40/122
Judges; District Court; Authority to Dispose of Juvenile Cases	41/679

Judges; District Court; Bail; No Authority to Fix in Capital Cases	40/158
Judges; District Court; Power to Issue Certain Writs	40/123
Judges; District Court; Power to Issue Search Warrants for Drugs	40/192
Judges; Duty to Respond to Subpoena Ad Testificandum	41/405
Judges; Emergency; Jurisdiction of in Signing Judgments Out of Term	40/125
Judges; Retirement; Applicability of G. S. 7A-4.20 to District Court Judges	41/763
Judges; Special; Jurisdiction; Commitment of Criminal Defendant for Mental Examination	40/126
Judgments; Drivers' Licenses; Irregular, Voidable and Void	40/415
Judgments; Drivers' Licenses; Limited Driving Privilege; Authority of Court to Vacate Portion of Judgment; Allowing Limited Driving Privilege	40/410
Judgments; Drivers' Licenses; Limited Driving Privilege; Modification of Order	40/409
Judgments; Modification to Allow Limited Driving Privilege	41/16
Judgments; Validity of Criminal Judgment Not Signed by Presiding Judge	40/128
Juries-Jurors; Jury Commission; Method of Jury Selection; Systematic Procedure	40/129
Jurisdiction; Adoption; Finding of Abandonment by Clerk Improper	41/751
Jurisdiction; Amount in Controversy; Including Amount Counterclaimed for Purposes of Determining Jurisdiction	41/300
Jurisdiction; Bad Check Cases; Plea of Guilty	40/129
Jurisdiction; Claim and Delivery; Defendant Resides Outside County Where Suit is Instituted	40/130
Jurisdiction; Concurrent Jurisdiction District and Superior in Misdemeanor Cases	40/132

Jurisdiction; Juveniles; Jurisdiction of Court in Custody Matter Where Child is on Federal Reservation	41/580
Jurisdiction; Tax Foreclosure Suits	40/808
Jurisdiction; Tax Foreclosure Suits; Authority of Superior or District Court to Grant Judgment by Default Final	40/133
Jurisdiction; Tax Lien Foreclosure	40/811
Jurisdiction; Waiver of Procedural Defects	40/193
Jury Trial; Divorce; Waiver by "Personal Service"	41/473
Jury Trial; Divorce; Waiver of Jury Trials in District Court	40/134
Juveniles; Authority to Dispose of Juvenile Cases in District Court	41/679
Juveniles; Custody; Duration of Custody of County Social Services Department	40/316
Juveniles; Custody; Effect of Placement of Custody by Judge of Juvenile Court	42/88
Juveniles; Detention of Delinquent or Undisciplined Children Prior to Hearing	41/587
Juveniles; Inapplicability of Article 2A, Chapter 110 to County Not in District Court System	40/671
Juveniles; Jurisdiction; Rape or Assault With Intent to Commit Rape	41/23
Juveniles; Jurisdiction Over Child Custody Where Child is on Federal Reservation	41/580
Juveniles; Mental Hospitals; Centers for the Mentally Retarded; Commitment of Juveniles	41/637
Juveniles; Probation; Education; Compulsory Attendance Law	42/133
Juveniles; Release, Conditional; Probation Orders	41/914
Juveniles; Release from Correctional Institutions; Custody	41/375
Juveniles; Transporting to Training School	40/677

Magistrates; Appeal From	40/135
Magistrates; Assignment of Small Claims; Jurisdiction and Venue	40/136
Magistrates; Attorney Fees; Authority to Allow Under G. S. 6-21.1	40/136
Magistrates; Criminal Appeals From	40/182
Magistrates; Indictments and Warrants; Failure of Magistrate Issuing Warrant to Designate His Title on Warrant Form or Uniform Traffic Citation	40/178
Magistrates; Magistrates Have Not Succeeded to Justice of the Peace Powers to Take Justification of Defendant's Sureties	41/628
Magistrates; Nomination and Appointment of	40/137
Magistrates; Peace Warrant; Power to Issue	40/138
Magistrates; Power to Issue Search Warrants for Drugs	40/192
Magistrates; Power to Suspend Judgment; Probation	40/138
Magistrates; Probate and Registration of Instruments; Certificate of Clerk of Superior Court Not Required When Magistrate Takes Acknowledgment	40/140
Motor Vehicles (See Motor Vehicles)	
Nolle Prosequi; Powers of the Court With Regard to Same	41/571
Prosecutors; Private Attorney Assisting Prosecutor on Per Diem Basis May Practice Law	40/141
Public Defender; Compensation; Full-Time Duties	40/142
Publications; Ownership of Publications Distributed Under G. S. 147-45 or Court Facility Fees to Officials and Agencies	41/176
Records; Duty to Furnish to Veterans Free	40/636
Solicitors; Judgments; Prayer for Judgment Continued; Right of Solicitor to Pray Judgment	41/97

Solicitors; Setting Cases for Trial on Criminal Docket	41/37
Solicitors; Special County Attorney Under Chapter 108; Duties	40/715
Summons and Process; Juvenile Cases; Police Officers; Duty to Serve Process	41/892
Summons and Process; Nonresidents, Service of	42/110
Venue; Adoption Proceeding; Removal and Waiver of Venue Requirements	41/180
Weapons; Disposition of Personal Property Seized by Police	40/143

CREDIT CARDS

Insurance Business Through Credit Card Facilities; Solicitation for Policies and Collection of Premiums	40/328
Taxation; Ad Valorem Taxes; Payment of; Drafts	40/817

CREDIT UNIONS

Interest; Maximum Interest Chargeable; Installment Payments Not Mandatory	40/49
Interest Rates; Applicability of Chapter 1303, 1969 Session Laws	40/48
Investment of Funds; ICU Government Securities Program	40/50

CRIMINAL LAW AND PROCEDURE

Abduction of Children; Removal of Child From State	40/143
Abortions (See Abortions)	
Appeals; District to Superior Court; Duty of Clerk	40/101
Appeals; District to Superior Court; Jurisdiction of Superior Court over Lesser Included and Related Misdemeanors	40/145
Appeals; Jurisdiction of Superior Court Over Misdemeanors	41/247
Appeals; Withdrawal of Appeals From District Court to Superior Court; Cost	40/96
Appeals by State	41/497

Appeals by State from Superior Court to Court of Appeals	40/149
Appearance Bonds; G. S. 24-5	41/809
Appointment of Counsel in Petty Misdemeanor Cases; Miranda Warnings in Petty Misdemeanor Cases	41/256
Armed Robbery; Use of Toy Pistol	40/149
Arrest; Bail; Right to Communicate	41/295
Arrest; Bail; Taking and Fixing Bail	41/110
Arrest; Company Police; Powers of	41/775
Arrest; Hot Pursuit; Municipal Policemen; Auxiliary Police Officers	41/724
Arrest; Hot Pursuit; Power of Police Officer Outside Corporate Limits of Municipality	41/929
Arrest; Misdemeanor in Presence of Officer; Change of Charge	41/815
Arrest; Misdemeanor Not in Presence of Arresting Officer; Uniform Traffic Citation	41/809
Arrest; Special Police; Powers of; Resisting Arrest	40/152
Arrest; Suppress, Motion to; Arrest Not Grounds for	41/286
Arrest; Warrant; Issued to Run Outside District; Statewide Validity	40/153
Arrest; Warrant; Service of on Sheriff for Misdemeanor by State Highway Patrolman	40/150
Assaults; Punishment	40/154
Bad Check Cases; Jurisdiction; Plea of Guilty	40/129
Bail; Authority of Clerks of Court to Take and Fix	40/156
Bail; Jailer Taking and Setting	40/157
Bail; No Authority for District Court Judge to Fix Bail in Capital Cases	40/158
Bail; Sheriff Not Set But May Take	40/628
Barbiturates; Indictment and Proof; Negating Exceptions	40/159
Calendar of Cases; Solicitor's Duty	41/37
Citizenship; Pardon; Granting of Pardon Does Not Restore Citizenship	40/162

Commitment to Commissioner of Correction Pending Appeal; Safekeeping of a County Prisoner	40/163
Company Police; Special Police; Territorial Jurisdiction and Power of Arrest; Hot Pursuit	40/164
Concealed Weapons; What Constitutes; G. S. 14-269	41/207
Contempt; Failure of Defendant and Witnesses to Appear; Bond Forfeiture	40/165
Continuances; Time of Granting	41/571
Contributing to the Delinquency of a Child; Conviction of a Person Other Than a Parent, Guardian, or Other Person Having Custody or Control of the Child; G. S. 14-316.1	41/92
Disorderly Conduct; G. S. 14-288.4 Applicable to a Non-Riot Situation	40/166
Drugs; Hallucinogenics; Phencyclidine Hydrochloride (PCP, SERNYL)	41/373
Drugs; Testimony for Probable Cause Hearing; May Law Officer Testify That Certain Substance Was Illegal Drug	41/122
Drunken Driving (See Motor Vehicles; Drunken Driving)	
Embezzlement; Punishment	40/167
Evidence; Husband and Wife; Court Cannot Compel Wife to Testify in Criminal Action Brought by Wife Against Husband for Assault on Wife	40/168
Extraditions; Duty of the Governor with Regard to Agents' Commissions	40/169
Extraditions; Return of Probation Violators to State Where Probation Imposed	40/171
Fingerprinting and Photographing Juveniles	40/670
Fingerprinting Misdemeanants; Authority for	40/173
Fireworks; What Constitutes	40/174
Grand Jury; Witnesses; Authority of Grand Jury to Summons Witnesses	40/175
Hot Pursuit; Arrest by Police Officer Outside Corporate Limits of Municipality	41/929

Indictments and Warrants; Arrest Warrant Issued Upon Information and Belief of Police Officer	40/176
Indictments and Warrants; Failure of Magistrate Issuing Warrant to Designate His Title on Warrant Form or Uniform Traffic Citation	40/178
Jails; Custody of Prisoners; Time When Custody Passes From the Arresting Officer to the Jailer	40/350
Judgments; Prayer for Judgment Continued; Finality of Sentence	40/179
Judgments; Prayer for Judgment Continued; Right of Solicitor to Pray Judgment	41/97
Judgments; Validity of Criminal Judgment Not Signed by Presiding Judge	40/128
Jurisdiction; Misdemeanors; Concurrent Jurisdiction Superior and District Courts	40/132
Jurisdiction; Police Chasing Speeding Motorist Outside Corporate Limits; No Authority; Workmen's Compensation for Injury Outside Corporate Limits	40/181
Jurisdiction; Police in Hot Pursuit; Power of Arrest Outside City Limits	41/724
Jurisdiction of Superior Court Over Misdemeanors	41/247
Larceny; Dogs Not Listed for Taxes; G. S. 14-84; G. S. 67-15; G. S. 67-27	41/309
Law Enforcement; Legality of Law Enforcement Officers from Out of Jurisdiction Serving as Undercover Agents in Another Jurisdiction	42/76
Licenses; Practicing Without When Licensing Board Not Appointed	40/373
Magistrates; Criminal Appeals From	40/182
Mental Examination; Commitment of Criminal Defendant for; Jurisdiction of Special Judges	40/126
Mental Hospital Commitment Under G. S. 122-84;	

Inapplicability of G. S. 122-67 Regarding Administrative Probationary Release	41/935
Mental Incompetents; Acquittal Upon Grounds of Mental Illness; Commitment to State Hospital	41/854
Mental Incompetents; Commitment by District Court Judge	41/259
Miranda Warning; Motor Vehicles	41/660
Nolle Prosequi; Powers of the Court With Regard to Same; Continuances; Time of Granting	41/571
Paroles; Parole of Convict Committed to Hospital for the Mentally Ill; G. S. 122-85	41/550
Pollution, Air; Local Responsibility for Prosecution	41/519
Preliminary Hearing; Right to Transcripts	41/737
Pre-Sentence Diagnostic Study; Appealability of Commitment for; G. S. 148-12(b)	41/67
Probable Cause Hearing; Degree of Proof Necessary at Probable Cause Hearing in Narcotics Case; May Law Officer Testify That Certain Substance Was Illegal Drug	41/122
Probation; Revocation; Clerks of Court; Commitments	41/847
Probation Commission; Taking Fingerprints and Photographs of Adult Probationers	40/184
Public Drunkenness; Authority of Peace Officers to Arrest	42/41
Public Drunkenness; Public Place; Powers to Arrest in Public Place	40/185
Public Drunkenness; Punishment for Second and Subsequent Convictions	40/187
Punishment; Hard Labor Prohibited by Constitution	41/440
Rape or Assault With Intent to Commit Rape; Presumption on Juveniles	41/23
Search and Seizure; Contents of Search Warrant	41/310

Search and Seizure; Search Warrants	41/416
	41/424
Search and Seizure; Search Warrants; Students'	
Dormitory Room on State Property	40/188
Search and Seizure; Search Warrants; Surgery and	
X-Ray of Defendant	41/88
Search and Seizure; Search Warrants	41/424
Sentence, Suspended; Liability of Inmate of	
Mental Institution for Cost and Care of	
Treatment When Commitment is Condition of	
Suspended Sentence	41/579
Sentencing; Judgment and Commitment; Correction,	
Department of; Prisons and	
Prisoners	42/68
Sentencing; Presentence Report; Use of Prior	
Convictions; Probation and Probation	
Officers	42/92
Service of Process; Sheriffs; Warrants; Duties	
Regarding Service of Criminal	
Process	40/188
Special Police; Campus Police; Railroad Police;	
Private Detectives; Scope of Authority of	
Arrest; Carrying Concealed Weapons;	
Chapter 74A. General Statutes of North	
Carolina	41/270
Stolen Property at Pawnshops; Repossession by	
Law Enforcement Officer	41/839
Subpoena Ad Testificandum; Requiring Presence	
of District Court Judge	41/405
Warrants; Clerks of Courts; Power to	
Issue	40/191
	40/192
Warrants; Drunken Driving While Riding	
a Horse	41/172
Warrants; Extradition; Method of Returning	
Probation Violators to State Where	
Probation Was Imposed	40/171
Warrants; Jails; Duty of Jailer to Receive	
Prisoner Before Warrant Issued	40/351
Warrants; No Authority to Hold Suspect Without	
Warrant for Purpose of	
Investigation	40/192

Warrants; Resisting Arrest for Riding a Horse While Intoxicated	41/172
Warrants; Search; Contents	41/310
Warrants; Search; Person Authorized to Issue Search Warrants for Drugs in Counties Having District Courts	40/192
Warrants; Search of Student's Dormitory Room	40/188
Warrants; Waiver of Procedural Defects	40/193
Weapons; Clerk of Superior Court; Sheriffs, Issuance of Pistol Permits	40/194
Weapons; Educational Property; Applicability to Forest Lands Owned or Controlled by Universities; G. S. 14-269.2	41/539
Weapons; Firearms; Federal Firearms Act of 1968; Criminal Justice Planning Units; Exempt Transfers; 18 USCA 925 and 26 USCA 5853	41/568
Weapons; Pistol Permits; Permissible Number of Permits	41/415
Weapons; Pistol Permits to be Obtained in County Where Gun Purchased or Transfer Made; Venue of Criminal Trial for Violation of G. S. 14-402	40/195
Weapons; Pistol Permits to 18, 19 and 20-Year Old Persons	41/465
Weapons; Possession of Weapons by Faculty Members of Schools in Homes of Faculty Members Located on School Property	41/466
Youthful Offender; Parole on Conditional Release	42/83
Youthful Offender; Revocation of Parole; Consequences	41/868

D

DAY CARE FACILITIES (See Social Services; Day Care Facilities)

DENTISTRY (See Licenses & Licensing; Dentistry)

DISTRICT COURTS (See Courts; District Courts)

DIVORCE (See Marriage & Divorce)

DOGS

Damage Fund; Authorization to Spend Surplus	40/71
Larceny; Taxes Paid or Not	41/309
Municipal Ordinances; Nuisances	40/485
Taxes; Statute of Limitations	40/73

DOMICIL

Taxation; Ad Valorem Taxes; Effect of Marriage to Nonresident Serviceman Upon Taxation of Personalty Owned by Woman Who Was Legal Resident of County Before Marriage	40/825
--	--------

DOUBLE OFFICE HOLDING (See Public Officers & Employees; Double Office Holding)

DRAINAGE DISTRICTS

Dissolution; Organizing New District Which Overlaps Old District	40/196
Timber; Ownership of	40/197
Watershed Improvement Programs; Authority of County to Expend Money Outside County	40/198

DRIVER'S LICENSES (See Motor Vehicles; Drivers' Licenses)

DRUGS

Addicts; Use of Methadone in Treatment of	41/103
Hallucinogenics; PCP, SERNYL	41/373
Methadone Program; Federal and State Law Applicable	41/741
Probable Cause Hearing; May Law Officer Testify That Certain Substance Was Illegal Drug	41/122

EDUCATION

Advisory Councils; Authority of County Board of Education to Terminate the Term of Advisory Council Members Before the Expiration of the Term for Which They Were Appointed	40/200
Annexation of Territory of County Administrative Unit to City Administrative Unit; Conveyance of School Property	40/201
Assignment of Pupils; Assignment on the Basis of Geographic Zones; Residence of Pupils; Appointment of Guardian to Change a Pupil's Residence	41/5
Assignment of Pupils; Pupils Attending Supplement Districts From Non-Supplement Districts in the Same County	40/202
Board of Education; Voting of; Proxy	40/203
Bond Elections; Allowable Time for Special Elections to Approve County Commissioners Bond Order; Writ of Mandamus to County Commissioners to Compel Bond Order	40/203
Budget of County and City Boards of Education; Purchase of Catastrophic Accident Insurance	41/351
Changing City School Administrative Area to Make Same Contiguous With the City Limits	40/205
City Board of Education; Boundaries of; Automatic Extension of Boundary Lines by Virtue of Local Statute	40/206
City Board of Education; Eligibility of a Person to Serve on the City School Board Who Lives Within the Corporate Limits of the City But Outside the City School District	40/206
Colleges and Universities; Annuity or Retirement Income Contracts for Faculty Members, Officers and Employees of	

State-Supported Institutions of Higher Learning; G.S. 116-46.2	42/6
Colleges and Universities; Authority of State Board of Higher Education to Approve Programs for Degrees Other Than the Master's Degree But at a Level Less Than the Ph.D.	40/207
Colleges and Universities; Qualifications for In-State Tuition; Chapter 845 of the 1971 Session Laws	41/445
Community Colleges; Authority to Convey Property Without Approval of the State Board of Education	40/208
Community Colleges; Authority to Pay Total Premiums on Salary Continuation Insurance of Employees	40/210
Community Colleges; Business Ventures	41/790
Community Colleges; Contracts; Modification or Waiver of Written Contract of Employment by Subsequent Parole Agreement	40/210
Community Colleges; Interpretation of Bond Resolution; Expenditure of Bond Funds	41/682
Compulsory Attendance Law; Applicability to Juvenile who is on Probation	42/133
Compulsory Attendance Law; Home Instruction of Child by Tutor in Lieu of Attending a Public or Private School	40/211
Compulsory Attendance Law; Married Child Under the Age of Sixteen Years	40/215
Condemnation for School Site; Acquisition of Land by Purchase as Affecting the Right to Condemn	40/216
Conflict of Interest; County School Board Member as Employee of Company Contracting With State Board of Education	40/217
Consolidation; Authority of Board of County Commissioners	40/218
Consolidation; Constitution of the Merged Board and Number of Members of Said Board	40/219

Consolidation; Dissolution of Old Unit After Merger or Consolidation; Disposition of Supplemental Tax Previously Approved	40/221
Consolidation; Effect of Merger of the Two School Administrative Units Upon Order of the Federal Court Assigning Pupils and Upon Plan Adopted and Approved by HEW for Assignment of Pupils	41/648
Consolidation; Effect of the Consolidation of These Two School Units Upon the Term of Office of the Member of the School Board Which Would Otherwise Become Vacant in 1972	41/644
Consolidation; Effect on Prior Local and Subsequent General Legislation	40/223
Consolidation; Election of Board Members; Marion City and McDowell County Boards of Education	40/225
Consolidation; Election of Board Members; Proposed Merger of Wake County and Raleigh City Boards of Education	40/226
Consolidation; Proposed Merger of Raleigh City and Wake County School Administrative Units; Continuation of Supplemental Taxes Presently Levied in the Areas Served by the Raleigh City and Wake County School Administrative Units	40/228
County and City Boards of Education; Authority of Local Board of Education to Promulgate Rule Releasing Students Sixteen Years and Older Who Need Two or Three Courses for Graduation After Noon for Non-School-Related Employment	41/689
County Board of Education; Election of Members	40/230
County Board of Education; Election of Members; Effect of Ch. 1301, Session Laws of 1969; Ch. 296, Session Laws of 1963 as They Apply to Durham County	41/759
County Board of Education; Executive Sessions; Disclosure to the Public When Executive	

Session Will Be Held; Public Report as to Action Taken in Executive Session; Ratifying in a Public Meeting Matters Decided in an Executive Session	40/231
County Board of Education; Power to Construct School Addition Over Sanitary District Easement	40/232
Elections; Additional Supplemental Tax	40/233
Elections; Filling Vacancies on Board Whose Members Were Elected in Non-Partisan Election	40/235
Elections; Filling Vacancy on County Board of Education	40/237
Elections; Filling of Vacancies; Terms of Office	40/236
Elections; Majority or Plurality Votes	40/238
Elections; "One-Man-One-Vote" Principle; Residence Requirement; McDowell County	40/239
Elections; "Single-Shot" Voting	40/293
Elections; Voters Who Reside in City Administrative Units Excluded From Participating in Election of County School Board Members	40/240
Greater University; Board of Governors; Officers and Employees of State Not Eligible to Serve	41/623
Hearing Before County Board of Education on Issue of Removing or Refusing to Renew Teacher Contract; Libel and Slander; Absolute Privilege or Witness Testifying Before County School Board and Making Affidavit	40/241
Kindergartens; Local Funds; Number of Kindergartens Required Where One Established	40/244
Leasing of Equipment for Public Schools Without Annual Renewal Lease	40/245
Mentally Retarded Students; Assigning School Tasks to as Part of Learning Experience	40/246
Mentally Retarded Students; Autistic Children;	

Functionally Retarded Children Including Autistic; Schizophrenic and Other Educationally Handicapped Children	40/247
Mentally Retarded Students; Duty of State to Provide Suitable Schools for	40/248
Necessary Expense; County Funds for Athletic Field	41/785
Principal, Assistant; Nomination and Approval of	40/250
Private Schools; Use of Property of a Public School	40/251
Property; Authority of City Board of Education to Lease School Building and Adjoining Property to Private Nonprofit Corporation	41/302
Property; Lunchrooms; Use for Non-School Purposes; Activity Buses for County Association of Retarded Children	40/252
Releasing Students 16 Years and Older Who Need Two or Three Courses for Graduation After Noon for Non-School-Related Employment	41/689
Religion; Constitutional Law	41/802
Salaries; Time of Payment of Teachers and Administrative Personnel	40/252
Sale of Property; Authority of Board of Education to Sell and Convey Real Estate to Redevelopment Commission Created Pursuant to Article 37 of Chapter 160 of the General Statutes Without the Necessity of Advertising and Sale of Property at Public Auction	41/362
Sale of Surplus Property; Application of Proceeds of Sale	40/253
Sale of Surplus Property; Conformity to Statutes Regulating Judicial Sales of Real Property; Confirmation of Bids	40/255
Sale of Surplus Property Which Has Been Abandoned and Is No Longer Necessary or Desirable for Public School Purposes	40/256
Sale or Lease by County or City Board of Education of Abandoned Real Property to a Municipality; G. S. 160-61.2	41/597

School Name; Use of on Jewelry; Authority of Local Board of Education to Restrict Use of	40/257
Solicitation by Students for the Sale of Magazines From House to House	40/258
State Board of Higher Education; Authority Over Granting Degrees by State Institutions of Higher Learning	40/746
State Education Assistance Authority; Maximum Rate of Interest to be Charged Upon a Student Loan Insured Under the Higher Education Act	40/258
Students; Pregnancy; Rules and Regulations Making Pregnancy of Public School Student a Ground for Expulsion or Exclusion	40/259
Superintendent; Duration of Contract of Employment of	40/261
Superintendent; Filling Vacancies in the Office of	40/262
Supplemental Taxes; Collection of Special School Tax for Lumberton City Administrative Unit From Residents Outside City	40/263
Supplemental Taxes; Levy of	40/264
Supplemental Taxes; Time of Levy of Taxes; Littleton-Lake Gaston School District	40/265
Teacher Aides; Authority of Principal and Teacher to Assign Supervisory Responsibility to Teacher Aides and Liability for Actions of Such Teacher Aides	40/267
Teachers; Assignment of Teachers to Various Schools; Penalty for Refusing to Honor Assignments	40/268
Teachers; Assignment of Teachers to Various Schools Within the District or to Schools Outside the District	40/269
Teachers; Contracts; Designating Particular School Where Teacher Shall Teach Under "Special Conditions" of Contract; Relocation of Teacher to a School Within the School	

System Other Than That Specified in the Contract in Order to Comply With Federal Court Order Requiring Total and Complete Integration	40/270
Teachers; Contracts; Inability to Perform Contract Because of Disability; Sick Leave of Teachers	40/271
Teachers; Extracurricular Activities After Normal School Hours	41/188
Teachers; Health Certificate Required for Teachers and Other School Personnel	40/274
Teachers; Health Certificates Required for Teachers and Other School Personnel; Health Certificates Furnished by the Department of Public Health	40/273
Teachers; Scholarship Loan Fund for Prospective Teachers; Eligibility of Teacher to Receive Credit on Loan for Teaching in a Technical Institute Under the Provisions of G.S. 116-174(5)	41/87
Teachers; Teacher Tenure Act; G. S. 115-142	41/845
Teachers; Teacher Tenure Act; G.S. 115-142; Career Teachers	42/61
Teachers; Teacher Tenure Act; G.S. 115-142, Effective July 1, 1972; Personnel File	41/782
Teachers; Unions; Right of Professional or Union Organizations to Bargain Collectively With Local School Boards and to Negotiate a Collective Contract for Teachers	40/274
Technical Institutes; Appropriation of Tax Funds	40/276
Technical Institutes; Extension Unit of County and City Boards of Education; Authority of Board of County Commissioners to Appropriate Funds	40/277
Technical Institutes; Extension Unit of County and City Boards of Education; Eligibility of an Employee of a Technical Institute to Serve as a Member of a County Board of Education	40/279

Technical Institutes; Teachers; Scholarship Loan Fund for Prospective Teachers; Eligibility of Teacher to Receive Credit on Loan for Teaching in a Technical Institute Under the Provisions of G.S. 116-174(5)	41/87
Technical Institutes; Tuition; Student Forced to Leave on Day of Registration by Reason of Mother's Illness; Refund of Tuition	40/280
Tort Liability of Board of Education and Employees for Injuries Sustained by Children Arriving at School Prior to Formal Opening Each Morning of School	40/281
Transfer of One Grade to Another Facility; Discretion of County Board of Education	40/282
Transportation of Students; School Buses; School Bus Routes; G.S. 115-184	41/788
Transportation of Students; Use of Activity Buses	40/284
Transportation of Students; Use of School Buses for Other Than Public School Purposes	40/285
Transportation of Students in Municipalities; State Board of Education; Director of Budget; Authority to Transfer Funds	40/286
Vocational Education; Right to Retain House Built by Classes as Home for Principal	40/288
Vocational Rehabilitation; Residence Requirement for Eligibility for Services of State Superintendent	40/289
Weapons on School Ground; Applicability of G.S. 14-269.2 to Forest Lands Owned or Controlled by Universities	41/539
Workmen's Compensation; Authority of Board of Education to Compensate Injured Employee	

From School Funds; Reservation of Sick Leave of Employee Until Workmen's Compensation Benefits Have Been Exhausted	40/290
---	--------

ELECTIONS

Ambulances; No Authority for County to Hold Any Election Not Authorized by Statute	40/74
Assistants; Appointment of in Each Precinct	40/291
Assistants; Municipal Elections	40/464
Beer and Wine; Circulation of Petition and Return Within 90 Days; Discretion of County Board of Elections to Extend Time	40/4
Beer and Wine; Holding County-Wide Election After Municipal Election; Time of Holding	40/5
Beer and Wine; Petition; Qualified Signer	40/6
Beer and Wine; Sale Not Prohibited in G. S. 163-272	40/7
Bonds; Promotion of by County	40/75
Candidates; At Large; Municipal Board of Aldermen Candidates	40/463
Double Office Holding; County Registrar and Judges Serving in Municipal Elections	40/574
Education; Additional Supplemental Tax	40/233
Education; Bond Elections; Allowable Time for Special Elections to Approve County Commissioners' Bond Order; Writ of Mandamus to County Commissioner to Compel Bond Order	40/203
Education; County Board of Education	40/230
Education; Election of Consolidated School Unit Board Members	40/225
Education; Filling Vacancies on Board Whose Members Were Selected In Non-Partisan Election	40/235
Education; Filling Vacancy in County	40/236

Board of Education	40/237
Education; Non-Partisan Selection of School Board; Filling Vacancies	40/235
Education; "One-Man-One-Vote" Principle; Residence Requirement; McDowell County	40/239
Education; "Single-Shot" Voting	40/293
Education; Voters Who Reside in City Administrative Units Excluded From Participating in Election of County School Board Members	40/240
Executive Secretary of County Board of Elections; Member of the County Board of Elections May Not Serve as Executive Secretary to That Board	41/577
Filling Vacancies Among Nominees Occurring After Nomination and Before the General Election; Conflict of Interest	40/292
General Assembly; Single-Shot Voting for Members of House of Representatives; District Office	40/292
Municipalities; New Registration and Looseleaf System Required in Town of Murphy	40/465
Primaries; Single-Shot Voting	40/466
Primaries; Single-Shot Voting; Non-Partisan County Board of Education Election	40/293
Primaries; Statutes; Construction of Statute Which Amends Prior Law but Erroneously Cites Section	40/294
Primaries; Withdrawal of Candidate Before Second Primary	40/295
Registration and Voting; Durational Residence Requirements Rendered Void by U. S. Supreme Court Decision	41/806
Registration Commissioners; Time of Appointment	42/79
Registration of Transients; Qualification of Voters	40/467
Registration of Voters Between First and Second Primary	40/468
Registration Records; County Board of	

Commissioners Required to Provide Adequate Funds for Safekeeping of Records	40/76
Salaries of Officers of County Boards; Authority of County Commissioners in Budget Appropriations	41/40
Sanitary Districts; Merger Election	40/641
Statutory Construction; Effect of Statute Erroneously Citing Act Amended	40/294
Straw Vote; Election by Counties; No Authorization for	42/26
Supplemental Education Tax; Looseleaf Registration System	40/233
Time When Special Municipal Elections May be Held	41/881
Write-In Votes Authorized in Municipal Elections	40/470
Zoning; County Commissioners; No Authority for Commissioners to Hold a "Straw Vote" Election	40/95

EMERGENCY EMPLOYMENT ACT OF 1971

Interpretation of the Act; Expenditures Allowable to Administration of the Act by the State	41/746
---	--------

EMINENT DOMAIN

Drainage Districts; Timber; Ownership of	40/197
Highway Commission; Acquisition for Utility Lines Not Authorized	41/366
Highway Commission; Relocation Assistance	41/234
Housing Authorities	41/316
Housing Authorities; Authority of Housing Authority to Enter Property to Make Surveys	40/314
Municipality; Condemnation of City Hall Site	40/470
Redevelopment Commission; Attorneys' Fees	40/637
State Highway Commission; Relocation Assistance	41/255

ENVIRONMENTAL POLICY ACT OF 1971	
Impact Statement for State Agency Advisory Services	41/871
EQUAL EMPLOYMENT OPPORTUNITIES	
Women; Federal and State Law Applicable to State Employees	40/741
ESCHEATS	
Corporate Dividends; Application of Intangibles Tax	40/852
Hospitals; Applicability of Escheats Law to Hospital	42/14
Marketing Cooperatives; Applicability of G.S. 116A-7	42/12
Statutes of Limitations Inapplicable	42/49
EVIDENCE	
Driving Record; Use of Department of Motor Vehicles Records	40/394
Husband and Wife; Court Cannot Compel Wife to Testify in Criminal Action Against Husband for Assault on Wife	40/168
Impeachment; Use of Certified Master Driver License Check	40/434
EXECUTION SALES	
Disposition of Surplus Proceeds of Execution Sale of Real Property for Payment of Tax Lien Under G. S. 105-392	40/778
Order by Clerk; Necessity of Description of Property	41/427
EXECUTIONS	
Eviction (See Post Judgment Remedies (Civil))	
Sheriffs; Payment of Funds Received by Sheriff	40/530
EXECUTIVE SESSIONS	
Education, County Boards of	40/231

EXECUTORS (See Administration of Estates;
Executors)

EXTRADITION

Agent's Commissions; Duty of Governor 40/169
Warrants; Method of Returning Probation
Violators to State Where Probation
Was Imposed 40/171

F

FARMERS HOME ADMINISTRATION

Foreclosure Deed Exempt From Excise Stamp
Tax 41/149

FEDERAL NATIONAL MORTGAGE ASSOCIATION

Taxation; Not Exempt From Income and
Intangibles Taxes 41/146

FEDERAL TAXATION (See Taxation; Federal)

FINGERPRINTS (See Criminal Law & Procedure;
Fingerprints)

FIRE AND EXTENDED COVERAGE INSURANCE (See Insurance;
Fire and Extended Coverage)

FIRE DISTRICTS, RURAL (See Rural Fire Protection
Districts)

FIRE PROTECTION (See Municipalities; Fire Protection)

FIREWORKS

What Constitutes 40/174

FISHING LAWS (See Conservation & Development;
Fishing Laws)

FORECLOSURE

Excise Stamp Tax Applicable in Foreclosure Sale

Although Purchaser is Veterans Administration	41/168
Excise Stamp Tax Not Applicable in Foreclosure Sale When Purchaser is Federal Government Instrumentality	41/714

FUNERAL AND BURIAL TRUST FUNDS

Payments to Funeral Home for Future Burial Needs	40/51
Pre-Need Sale of "Garden Mausoleums", "Interment Crypts" and "Lawn Crypts"	40/52

G

GARNISHMENT

Ad Valorem Taxes; Commissions	40/812
Ad Valorem Taxes; Transferee's Liability for Prior Owner's Real Property Taxes	40/813
Exemption of the State of North Carolina From Federal Wage Garnishment Law to be Effective January 1, 1970	40/531

GAS, OIL (See Conservation and Development; Oil and Gas)

GENERAL ASSEMBLY

Legislative Services Commission; Authority to Contract for Services for the General Assembly; Computerized Statutory Retrieval System	40/296
Legislative Services Commission; Authority to Purchase Electronic Voting Equipment; G. S. 120-32	40/297
Members; Compensation; Effect of 1968 Constitutional Amendment	40/297
Reading of Bills; Constitutional Law; Senate Rules	40/308
Retirement (See Public Officers & Employees; Retirement)	

Salaries and Fees; Subsistence of Principal Clerks, Reading Clerks, Sergeants-at-Arms	40/310
GOVERNOR	
Appointments; Commissioner of Motor Vehicles; Authority of Governor to Appoint Acting Commissioner	40/310
Appointments; Industrial Commission Members	40/311
GRAND JURY	
Witnesses; Authority of Grand Jury to Summon Witnesses	40/175
GREAT SEAL OF NORTH CAROLINA	
G. S. 147-26; G. S. 144-2	41/214
GUARDIAN AD LITEM	
Appointment of by Industrial Commission and Powers of	40/41
GUARDIANS (See Administration of Estates; Guardians)	

H

HABEAS CORPUS	
Petition for When Clerk Orders Involuntary Commitment Under G. S. 122-63	41/219
HANDICAPPED PERSONS	
Drivers' Privileges; Constitutionality of G. S. 20-37.6	41/769
HEALTH	
Certificate of Need; Inapplicability to Facility Already Constructed but Not Fully Licensed	42/54
Certificate of Need; Proper Licensing Agency for Facility Which Combines Hospitals, Nursing Homes and Rest Home Care	42/57

Education; Health Certificates Required for Teachers or Any Other Employee of the Public Schools; Health Certificates Furnished by the Department of Health	40/273
Eighteen-Year-Olds; Consent for Treatment	41/489
Occupational Disease Hazards; State Board of Health Authority to Enter Industrial Plants	40/312
Sewage Disposal Systems; Public Water Supply; Authority of Board to Prohibit Sewage Disposal Systems	41/879

HEARING AID DEALERS (See Licenses & Licensing; Hearing Aid Dealers and Fitters Board)

HELMETS

Motorcycle; Requirement of	40/431
----------------------------	--------

HIGHWAY COMMISSION (See State Departments, Institutions & Agencies; Highway Commission)

HOSPITALS

County Hospital Exempt From Advance Costs as Instrument of County	41/232
Emergency Services; Classification of; Medical Care Commission	41/45
Escheats; Applicability of Escheats Law to Hospital	42/14
Extended Care Facilities; Applicability of the Limitations of "Allowable Costs Up to \$14.00 Per Day" in Appropriations Act of 1971	41/541
Facility Combining Hospital, Nursing Home and Rest Home Care Should be Licensed by the Medical Care Commission	42/57

HOUSING

Authority of City Council to Adopt an "Open Housing" or "Fair Housing" Ordinance	40/478
--	--------

HOUSING AUTHORITIES

Auto Mileage Allowance for Commissioners and Employees; G. S. 147-8, 147-9, 147-9.1 and 157.5	41/385
Commissioner of Labor; Boiler Inspection Fees; Exemption of Housing Authority	41/303
Eminent Domain; Authority of Housing Authority to Enter Property to Make Surveys	40/314
Eminent Domain; Restrictive Covenants	41/316
Financial Assistance; Authority of Municipality to Render; Contracts With Federal Government; Interest Rate in Excess of 6%	40/480 40/482
Labor; Contracts Between Units of Government and Labor Organizations Concerning Public Employees Declared to be Illegal	40/315
Six Percent Interest Limitation on Bonds Applicable	40/315

HUSBAND AND WIFE

Evidence; Court Cannot Compel Wife to Testify in Criminal Action Brought by Wife Against Husband for Assault on Wife	40/168
--	--------

I

IMPLIED CONSENT (See Motor Vehicles; Drivers' Licenses; Drunken Driving)

IMPORTS

Ad Valorem Tax Exemptions; Imported Products Stored in Warehouse; Import-Export Clause, Article I, Section 10, Clause 2 of the United States Constitution	41/157
---	--------

INCEST

Abortions; No Necessity for Report in Seven Days	40/144
--	--------

INCOMPETENTS (See Infants & Incompetents)

INDIANS

Eastern Band of Cherokee Indians; Federal Grant-in-Aid Funds; Authorizing Governmental Agency	41/165
Medicaid Benefits; Non-Federal Share Must be Paid by State	41/140

INDICTMENTS (See Criminal Law & Procedure; Indictments)

INFANTS AND INCOMPETENTS

Abandonment (See Social Services; Abandonment)	
Abortions; Consent of Minor or Incompetent Not Necessary	41/709
Abortions; Sufficiency of Consent of County Director of Social Services	41/862
Administrator; Right of Minor Widow to Nominate Administrator	40/26
Adoption of Minors (See Social Services; Adoption of Minors)	
Child Abuse; Investigation of	40/666
Contributing to the Delinquency of a Child; Conviction of a Person Other Than a Parent, Guardian or Other Person Having Custody or Control of the Child G. S. 14-316.1	41/92
Custody; Duration of Custody of County Social Services Department	40/316
Custody; Effect of Placement of Custody by Judge of Juvenile Court	42/88
Custody; Jurisdiction of State Courts Over Federal Reservation	41/580
Exhibition of Children; Provisions of G. S. 110-20.1 Regarding Exhibition of Certain Children and Television Coverage	41/590
Fingerprinting and Photographing Juveniles	40/670
Foster Home; Eligibility for Assistance	41/384
Guardians; Appointment of Child's Guardian When Parents are Living	41/14

Guardians; Appointment of Child's Guardian When Parents are Living for School Assignment Purposes	41/5
Guardians; Joint Savings Accounts; Right of Guardian to Remove Funds from Savings Account in Which Guardian's Ward Has a Contractual Right to Withdraw Funds	41/461
Judgments in Excess of \$1,000; Payment to CSC	40/317
Juveniles (See Social Services; Juveniles)	
Juveniles; Board of Juvenile Corrections; Conditional Release of Children; Custody Orders; Jurisdiction of the Court Over Children Who Have Been Released from Correctional Institutions	41/375
Juveniles; Board of Youth Development; Conditional Release of Children; Juvenile on Probation	41/914
Juveniles; Court Commitment to Mental Hospitals With Instructions to Transfer to Center for Mentally Retarded	41/637
Juveniles; District Court Jurisdiction; Charge of Rape or Assault With Intent to Commit Rape	41/23
Juveniles; District Court Jurisdiction; Custody of Child	41/410
Juveniles; Probation; Termination of On Reaching Majority	41/771
Juveniles; Probation; Termination Under Interstate Compact on Juveniles	42/117
Marriage; Consent by a Director of Social Services to Marriage of 16-Year-Old Pregnant Female; Residence of Minor to be Married	41/390
Medical Care; Sufficiency of Consent by County Department of Social Services	42/101
Mental Examination; Authority of Clerk of Superior Court to Order Physicians to Examine Allegedly Mentally Ill Person	41/35

Minors; Consent for Medical Treatment	41/489
Minors; Mental Health; Voluntary Admissions to State Hospital; Abortions	41/517
Minors; Person 18 to 21 Years Old May Be Deputy or Assistant Register of Deeds	41/476
Minors; Public Officers and Employees; Clerks of Superior Court; Sheriffs; Issuance of Permit to Purchase Weapon to 18, 19 and 20-Year-Old Persons; G. S. 48A-1, 48A-2; G. S. 14-402, <i>et seq.</i>	41/465
Officers; Persons 18 Years of Age May Be Notary	41/435
Officers; Persons Under 21 Years of Age May Not Serve on Recreation Commissions or Boards	40/603
Parent's Liability for Infant's Ambulance Bill	40/318
Physicians and Surgeons; Juvenile Training Schools; Consent for Medical or Surgical Care	40/674
Probation; Juveniles on Probation Who are Committed to and Conditionally Released from the Custody of the Board of Youth Development	41/914
Probation; Revocation of; Undisciplined or Delinquent Children	40/672
Probation of Juveniles; Supervision	41/350
Removal From State by Parent in Absence of Custody Order	40/143
Restoration of Competency by Hearing Before Clerk	40/320
Sterilization; Abortion; Age of Consent for Sterilization and Abortion	41/730
Sterilization; Sterilization of Unmarried Minors Under G. S. 90-272; Sterilization Under Article 7 of Chapter 35	41/162
Sterilization of Mentally Defective Person; Sterilization by X-Ray	41/107

INJUNCTION

Appeal Does Not Continue the Injunction Which Has Been Dissolved	40/567
---	--------

INSURANCE

Agents Writing More Than One-Half of Total Premium Production on Property of Employer; Employee of Lending Institution as Agent for Title Insurance Company	40/321
Automobile Liability Insurance Policies; Termination by Cancellation; Notice of Termination Within Sixty-Day Period From Policy Inception; Effect of	40/326 41/852
Automobile Liability Insurance Policies; Termination by Cancellation and Refusal to Renew; Applicability of 48 Month Exclusion	42/22
Automobile Liability Insurance Policies; Termination by Rescission; Legality of	42/29
Credit Card Facilities; Solicitation for Policies and Collection of Premiums Through Credit Card Facilities	40/328
Crop Dusting; Requirement of Liability Bond	40/330
Fire and Extended Coverage; Fair Access to Insurance Requirements Plan; Crediting of Participation by Insurers in the Reinsurance Facility	40/333
Group Accident and Health Insurance Policies; Payment of Benefits Directly to Employer by Insurance Company	41/864
Group Life Insurance Policies; Assignability	40/335
Group Life Insurance Policies; Assignability of Policies So As to Avoid Inclusion in Estate for Federal Estate and Inheritance Tax Purposes	40/338
Hospitalization and Accident and Health Policies; Renewability; Requirement as to Public Hearing on Filings for Rate Increases	40/340
Municipalities; Health and Accident Insurance (See Municipalities)	

Premium Taxes; Application of Premium Taxes to Unauthorized Business Written in North Carolina; Payment of Premium Taxes for Prior Years Upon Application for Admission to State; Interest	40/341
Reorganization of Domestic Insurance Company and a Foreign Holding Company; Applicability of North Carolina Law to Proposed Exchange	40/345

INTEREST

Banks; Savings and Loan Associations; First Mortgage Loans; Mortgages of Less than Ten Years	40/54
Bonds; 6% Limitation Applicable to Indebtedness of Local Housing Authorities	40/315
Credit Unions; Applicability of Chapter 1303, 1969 Session Laws	40/48
Credit Unions; Maximum Interest Chargeable; Installment Payments Not Mandatory	40/49
Housing Authorities; 6% Limitation Applicable to Indebtedness	40/315
Maximum Rate to be Charged by State Education Assistance Authority Upon Student Loan Insured Under Higher Education Act	40/258
Transfer Fee; Applicability of G. S. 24-10(d) Concerning the Allowable Transfer Fee That May be Charged by a Lender to a Person Assuming a Loan of Not More Than Fifty Thousand Dollars Secured by Real Property	41/822

INTERSTATE COMMERCE

Burden on; Privilege License Tax; Itinerant Photographers	40/861
--	--------

INTESTACY

Distribution of Intestate's Estate Among Brothers and Sisters and Their Legal Descendants	41/184
---	--------

INTOXICATING LIQUORS (For Opinions Prior to

January 1, 1972, See "ABC Act")	
Beer: Sunday Sales; County Regulation of; Straw Vote	42/26
Beer and Wine; Sale of Sweet Wine in City of Monroe; Chapter 541, Session Laws of 1963; Enactment of Chapter 18A of the General Statutes	42/4
Board of Alcoholic Control; Local; Requirement of Expenditure of Percentage of Total Profits for Education and Rehabilitation	41/779
Municipalities; Authority to Regulate Consumption and Display on Public or City-Owned Property	42/59
Sale of Surplus Property by Town or County ABC Boards; G. S. 18A-17; Public Auction	41/894
Solicitation of Sales; Authority of State Board to Regulate Solicitation of Sales of Alcoholic Beverages, Beer and Wine	42/51
Transportation; Alcoholic Beverages Being Transported to ABC Stores; Authority of Local Board to Transport Beverages	42/114

J

JAILS

Buildings Used for Jail; Transfer of County Funds	41/226
Hospitalization and Accident and Health Policies; Renewability; Requirement as to Public Hearing on Filings for Rate Increases	40/340
Custody of Prisoners; Time When Custody Passes From the Arresting Officer to the Jailer	40/350
Duties of Jailers to Receive, Incarcerate and Retain Prisoners	41/412
Duty of Jailer to Receive Prisoners Before Warrant	40/351

Fees; Authorized by Chapter 7A	40/114
Hospitalization of Prisoners; Hospital Expenses to be Paid by the County	40/352
Operating a Jail After the State Commissioner of Social Services Has Ordered it Closed; Action to be Taken by the Commissioner When Local Officials Fail to Close a Facility; Authority of the Commissioner to Reinspect a Facility and Issue a New Order After the Court Has Ruled Upon a Previous Closing Order	40/353
Sheriffs; Duty of Sheriff to Transfer Prisoners to Adjoining County	42/127
Sheriffs; Uniform Jail Fees; Payment by County of Jail Fees to Sheriff	40/90
Training of Persons Supervising a Jail	41/603
Transportation of Inmates to and from Court	41/267

JOINT BANK ACCOUNTS (See Banks; Joint Bank Accounts)

JUDGES (See Courts; Judges)

JUDGMENTS

Default; Complaint Signed by an Attorney Is Not Sufficient on Which to Base Default Judgment	41/625
Prayer for Judgment Continued; Finality of Sentence	40/179
Prayer for Judgment Continued; Right of Solicitor to Pray Judgment	41/97
Signing Out of Term; Jurisdiction of Emergency Superior Court Judge	40/125
Small Claims; Suits Brought by Agents of Plaintiff; Cancellation of Judgments by Agent of Plaintiff	40/118
Unsatisfied Judgments for Driver's License Suspension Purposes	41/109
Unsatisfied Judgments for Driver's License Suspension Purposes; Payment by One Joint Tortfeasor	41/99
Vacating Portion of Judgment Allowing Limited Driving Privilege	40/410

JUDICIAL SALES

- Upset Bid; Authority of Clerk to Accept More Than
Ten Days After Filing of Report of
Sale 40/105

JURIES-JURORS

- Jury Commission; Method of Jury Selection;
Systematic Procedure 40/129

JUVENILES (See Social Services; Juveniles and Infants and Incompetents)

JUVENILE TRAINING SCHOOLS

- Physicians and Surgeons; Consent for Medical or
Surgical Care 40/674

K

KINDERGARTENS (See Education; Kindergartens)

L

LABOR

- Boiler Inspection; Authority of Boiler Inspectors
of Department of Labor to Inspect Boilers
for Hot Water Heaters at Motel 40/355
- Collective Bargaining Contracts; Validity of
Check-Off by Employer of Union Dues and
Union Initiation Fees 40/356
- Contracts Requiring Closed Shop; Contracts
Requiring Any Arbitration to be Held in the
State of New York; Contracts Requiring Any
Litigation by Virtue of a Labor Contract to
be Instituted Only in Courts Located in the
County and State of New York 40/363
- Fair Labor Standards Act; Applicability to
Patients in State Mental
Institutions 41/153

Hours of Work for Women; Effect of Federal Regulations; Civil Rights Act of 1964	40/363
Minimum Wage Act; Amendment to G. S. 95-87; Part Time Employees Working Sixteen Hours or Less Per Week in Establishment Having Three or Less Full Time Employees	41/438
Public Employee Contracts; Contracts Between Units of Government and Labor Unions	40/591
Public Employee Contracts; Housing Authority; Contracts Between Units of Government and Labor Organizations Concerning Public Employees Declared to be Illegal	40/315
Public Employee Contracts; Municipalities; Right of Authority of Municipal Corporation or a City to Check-Off Labor Union Dues for the Benefit of a Labor Organization Composed of Its Employees	40/591
Public Employee Contracts; Teachers' Organizations; No Legal Right to be Recognized	40/274
Right-to-Work Statute; Right of Non-Union Member to Work on the Same Job with Union Members	40/364

LAUNDRY AND DRY CLEANING (See Business & Commerce; Laundry and Dry Cleaning)

LEGISLATIVE SERVICES COMMISSION (See General Assembly; Legislative Services Commission)

LIBEL AND SLANDER

Education; Hearing Before County Board of Education on Issue of Removing or Refusing to Renew Teacher Contract; Absolute Privilege of Witness Testifying Before County School Board and Making Affidavit	40/241
--	--------

LIBRARIES

Public Library Not a "Necessary Expense"	40/883
---	--------

LICENSES & LICENSING

Alcoholic Beverages (See "ABC Act" for opinions prior to January 1, 1972 and "Intoxicating Liquor" for opinions thereafter)	
Chiropractors; Practice of Medicine	41/749
Contractors, Board of; Renewal of License	40/365
Cosmetic Arts; Practice of Electrolysis; No Necessity for License: May Practice in Cosmetic Art Shop	40/367
Day Care; Facilities on Federal Reservations	42/128
Day-Care; Facility with Morning Kindergarten and a Lesser Number of Children for All Day Care	42/81
Day-Care; Licensing of; Payment of Privilege License Tax	41/887
Day-Care; Number of Children for Whom Facility Licensed	42/55
Dentistry; State Board of Dental Examiners; University of North Carolina; School of Dentistry; Dental Assistants; Instruction and Practice as to "Pumice Wash"; Exemption From G.S. 90-22, <i>et seq.</i>	40/368
Drivers' or Chauffeurs' Licenses (See Motor Vehicles)	
General Contractors; Installation of Industrial Equipment	42/45
General Contractors; Licenses	41/358
General Contractors; Necessity of Requiring License for Installation of Roof Costing Over \$30,000.00	41/414
General Contractors; Public Schools; Installation of Relocatable, Temporary Classroom Units; No Requirement of General Contractors's License to Install Such Unit	40/371
Hearing Aid Dealers and Fitters Board; Authority to Withhold License Under Grandfather Clause	41/51

Hearing Aid Dealers and Fitters Board; No Criminal Liability for Practicing Without a License When the Board Has Not Been Appointed	40/373
Hospital; Nursing Home and Rest Home; Facility Which Combines All Services	42/57
Intoxicating Liquor (See ABC Act for opinions prior to January 1, 1972, and Intoxicating Liquor for opinions thereafter)	
Mental Health; Hospital for Treatment of Alcoholism	41/400
Nursing Homes; Operation Without License	40/374
Plumbing and Heating Contractors; Contract for Sewage Disposal System Let to Plumbing Contractor	40/375
Plumbing and Heating Contractors; Necessity of Obtaining a License Under the Grandfather Clause Prior to Engaging in the Business of Plumbing and Heating Contracting	42/20
Plumbing and Heating Contractors; Qualification and Licensing Under the Grandfather Clause	41/298
Plumbing and Heating Contractors; Submission of Bid as Engaging in Plumbing and Heating Contracting; Penalties	41/673
Plumbing Contractors; General Contractors; Jurisdiction Over Installation of Water and Sewer Lines on Private Property	41/761
Practicing Psychologists; Professional Corporation Act	40/377
Practicing Psychologists; State Board of Examiners of; Applicant's Fees; Expenses of Board	40/376
Private Detectives; Bank Employee Investigation of Credit Card Fraud	40/378
Private Detectives; Requirement for Licensing and Bond; Article 9A, G. S. 66	41/552
Professional Engineers & Surveyors; Unlawful Use of Seal	41/423

Real Estate Licensing Board; Applicability of Act to Participation-Type Loans Negotiated by Mortgage Corporation	40/379
Real Estate Licensing Board; Licensing NC Residents Who Become Nonresidents; Reciprocity; G. S. 93A and G. S. 93A-9	41/531
Real Estate Licensing Board; Public Contracts; Public Bidding	40/381
Real Estate Licensing Board; Real Estate Broker; Unauthorized Practice; Restrictions and Covenants in Deeds; Requirement Grantor Serve as Sales and Rental Agent	40/381
Real Estate Licensing Board; Renewal of Expired License; Fees for Renewal of License; Renewal of License Under "Grandfather Clause"	40/382
Real Estate Licensing Board; Sale and Resale of Lots by Corporation Selling Golf Club Memberships; Rental and Lease of Houses by Corporation	40/383
Real Estate Licensing Board; Where Escrow Accounts of Real Estate Brokers May Be Maintained	40/384
Solicitation; Licensing of Public Solicitation; Applicability of Solicitation Statutes to State Agencies and Personnel	40/712

LIENS

Ambulance Services; Garnishment and Attachment; Collection From Without the County	41/134
Motor Vehicles; Priority of Ad Valorem Taxes Over Prior Perfected Liens and Security Interests	41/692
Motor Vehicles; Wrecker Fees Not Included in Mechanic's Lien	41/38
Social Services (See Social Services; Liens)	
Social Services; Statutes of Limitations or Conditions Precedent; Tolling of Statutes of Limitations	41/185 41/186
State Agency; Lien on State-Owned Rental Dwelling for Water and Sewage Service Charges	40/743

Taxation; Ad Valorem; Priority of Ad Valorem Taxes Over Prior Perfected Liens and Security Interests	41/692
Taxation; Attach to All Realty Within Taxing Unit	40/814
Taxation; Federal; Notice of Tax Levy on Funds Due From the State Department of Social Services to an Individual	40/832

LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM (See Retirement)

M

MAGISTRATES (See Courts; Magistrates)

MARRIAGE & DIVORCE

Divorce; Income Taxes; Basis for Gain or Loss; Estates by Entireties; Effect of Divorce; Sale of Interest by Divorced Spouse	40/838
Divorce; Jury Trial; Waiver of in District Court	40/134
Divorce; Jury Trial; Waiver Pursuant to G. S. 50-10 in Cases Involving Personal Service	41/473
Divorce; Jury Trial; Waiver Pursuant to G. S. 50-10 in Cases Involving Personal Service; Registered Mail Service	40/385
Education; Compulsory Attendance Law; Compulsory Attendance of a Married Child Under the Age of Sixteen Years	40/215
Intermarriage of Whites and Negroes	40/387
Minors; Consent by a Director of Social Services to Marriage of 16-Year-Old Pregnant Female; Residence of Minor to be Married	41/390
Miscegenation; Issuance of Marriage License; County Where License is Valid; Status of Marriage Without Proper License	41/132

MEDICAID (See Social Services; Medical Assistance)

MEDICAL EXAMINERS

Adoption of Chapter 152A, Effective Date of Ordinance	40/598
Authority of Chief Medical Examiner to Act as County Medical Examiner	40/595
Autopsies; Authority of County Medical Examiners to Order	40/596
Autopsies; County Health Director as County Medical Examiner	40/599
Double Office Holding; Coroner Acting as Medical Examiner	40/583
Double Office Holding; Medical Examiner System	40/582
Double Office Holding; Medical Examiners; County Medical Examiner; Coroner; Member of School Board; Coroner as Acting Medical Examiner	40/583
Investigation of Deaths; Authority to Remove Dead Body	41/117
Removal of Body of Deceased Motor Vehicle Accident Victim From Scene of Accident	40/601

MENTAL HEALTH

Area Mental Health Boards; Authority to Sue and Be Sued	42/120
Area Mental Health Boards; County Commissioners; Authority Over Mental Health Center	41/778
Chronic Alcoholics; Jurisdiction of Judge to Commit	40/122
Commitment; Acquittal Upon Grounds of Mental Illness	41/854
Commitment of Juveniles to Mental Hospital With Instructions to Transfer to Mental Retardation Center	41/637
Commitment to State Mental Institution; Waiver of Hearing Before Clerk	41/564
Competency to Stand Trial; Commitment by	

District Court Judge; G. S. 122-83	41/259
Consent for Medical Treatment; Provisions of G. S. 110-20.1 Regarding Exhibition of Certain Children and Television Coverage	41/590
Cost of Care and Treatment of Inmates; Parental Liability	41/507
Cost of Care and Treatment of Inmates; Patient's Liability	41/566
Courts; Responsibility for Transporting Mental or Inebriate Patients to Hospitals	41/457
Detention of Inebriates and Mentally Ill Persons; Authority of Clerk to Issue Custody Order to Sheriff	42/43
Detention of Inebriates and Mentally Ill Persons; Authority of Clerk to Order Non-State Operated Hospitals to Involuntarily Accept Patients	42/66
Drug Addicts; Drug Authority Rules and Regulations; Methadone Maintenance Programs	41/741
Drug Addicts; Use of Methadone in Treatment of	41/103
Emergency Hospitalization; Acknowledgment of Committing Physician	41/841
Examination: Authority of Clerk to Order Physicians to Examine Allegedly Mentally Ill Person	41/35
Examination and Hospitalization of Inebriates; Public Drunkenness as a Criminal Offense	42/41
Hospital Administration; Title of Business Manager; Assistants	41/898
Hospitalization; Escape of Patients	41/900
Interstate Transfer of Patient Found Not Guilty of Crime by Reason of Insanity	40/388
Involuntary Commitment; G.S. 122-63; Right to Appeal From Clerk's Order; Due Process Requirements Concerning Involuntary Commitment	41/219
Involuntary Commitment; Liability of Inmate	

for Cost of Care and Treatment Where Commitment is a Result of a Suspended Sentence	41/579
Judicial Hospitalization; Temporary Detention of Inebriate or Mentally Ill Person; Authority to Administer Oath to Affidavit of Facts and to Order Detention	41/856
Licensing; Treatment of Alcoholism	41/400
Liens; Determination of Priority	40/689
Mental Retardation; Council on Mental Retardation and the Mental Retardation Committee of the North Carolina Bar Association; Powers and Duties	40/389
Mentally Retarded Children; Duty of State to Provide Suitable Schools for Mentally Retarded	40/248
Mentally Retarded Children; Education of	40/247
Mentally Retarded Students; Assigning School Tasks to	40/246
Minors; Voluntary Admissions to State Hospital	41/517
Necessary Expense; Local Mental Health Clinic	40/815
Patient; Release of Information to Clerk	41/666
Release from Commitment to Hospital Under G.S. 122-84; Applicability of G.S. 122-67 to Mentally Ill Criminals	41/935
Restoration of Competency by Hearing Before Clerk	40/320
State Hospital Patients; Inapplicability of Fair Labor Standards Act	41/153

MIGRANT WORKERS

Residence for Purposes of Welfare Benefits	41/274
---	--------

MINIMUM WAGES (See Labor)

MISCEGENATION (See Marriage & Divorce)

MOBILE HOMES

Highway Relocation Assistance Act; Consideration of Mobile Homes for Highway Relocation Assistance Payments	40/762
Manufacture; Particular Operation Does Not Require License	41/850

MOTOR VEHICLES

Abandoned or Junked Vehicles; County Ordinance Authority	40/82
Abandoned or Junked Vehicles; Removal from Right of Way; Disposition of	40/437
Abandoned or Junked Vehicles; Removal of Abandoned Vehicles from Private Property	42/47
Accidents; Duty to Report Involving Unregistered Motor Vehicle; Mini-Bike; Applicability of Motor Vehicle Laws	40/390
Arrest for Misdemeanor Not Committed in Presence of Officer; Uniform Traffic Citation	41/809
Blue Light and Sirens; Company Police	40/391
Boats; Control of Boat Wake; Authority of County to Pass Ordinance	41/940
Breathalyzer Tests; Right to Counsel; 30 Minutes Delay	41/242
Bumper Specifications; Private Passenger Automobiles; G. S. 20-135.4	41/677
Chauffeurs' Licenses; Operation of Leased Vehicle Over 26,000 Pounds; Hauling Mail	40/393
Drivers' Licenses; Activity Buses	40/394
Drivers' Licenses; Chauffeur's Licenses; Restoration Fee	41/119
Drivers' Licenses; Driving While License Revoked; Evidence; Sufficiency of Department of Motor Vehicle Records to Prove Fact of Revocation of Driver's License	40/394
Drivers' Licenses; Drunken Driving (See "Motor Vehicles; Drunken Driving")	

Drivers' Licenses; Farm Tractor, Operation After Revocation of License	41/832
Drivers' Licenses; Financial Responsibility Act of 1953; Unsatisfied Judgments	41/109
Drivers' Licenses; Habitual Offenders	42/130
Drivers' Licenses; Limited Driving	41/322
	40/406
	40/407
	41/535
	41/596
	41/706
Drivers' Licenses; Limited Driving Privilege; Authority to Modify Terms of Judgment Allowing Limited Driving Privilege	40/409
Drivers' Licenses; Limited Driving Privilege; Authority to Vacate Portion of Judgment Allowing Limited Driving Privilege	40/410
Drivers' Licenses; Limited Driving Privilege; Conviction in Another State	40/400
Drivers' Licenses; Limited Driving Privilege; Driving After License Revoked; Sufficiency of Warrant	42/97
Drivers' Licenses; Limited Driving Privilege; Effective Date; Cases to Which Act Applies	40/412
Drivers' Licenses; Limited Driving Privilege; Implied Consent Authority to Revoke Limited Driving Privilege	40/414
Drivers' Licenses; Limited Driving Privilege; Irregular, Voidable and Void Judgments	40/415
Drivers' Licenses; Limited Driving Privilege; Modification of Judgment	41/16
Drivers' Licenses; Limited Driving Privilege; Modification of Order	40/418
Drivers' Licenses; Limited Driving Privilege; Permit; G. S. 20-179	41/659
Drivers' Licenses; Limited Driving Privilege; Pick-up of Licenses	40/420
Drivers' Licenses; Limited Driving Privilege; Prior Conviction	40/422

Drivers' Licenses; Limited Driving Privilege; Revocation; Driving Under the Influence, Second Offense	42/125
Drivers' Licenses; Nolo Contendere Plea	40/423
Drivers' Licenses; Nonresidents	40/425
Drivers' Licenses; Operation After Suspension or Revocation; Habitual Offenders; Proper Charge If Apprehended	40/426
Drivers' Licenses; Provisional Licensee; G. S. 20-13; Moving Violation	41/211
Drivers' Licenses; Record; Entries on Individual's Drivers' License Record; G. S. 20-26	41/116
Drivers' Licenses; Reduction of Points for Successful Completion of Driver Improvement Clinic; G.S. 20-16(c)	42/84
Drivers' Licenses; Relationship Between Driving Without a License and Driving While License Suspended or Revoked	40/427
Drivers' Licenses; Resident, Definition of	40/427
Drivers' License; Suspensions; Time Suspension Begins	40/428
Driver's Permit; Accompanying Driver May Hold Restricted Driving Privileges Under Certain Conditions	41/596
Drunken Driving; Blood Test; Liability of Physician Taking Blood Sample for Alcohol Content Test at Request of Law Enforcement Officer	40/395
Drunken Driving; Blood Test; Liability of Physician Taking Blood Sample for Alcohol Content Test From Unconscious Person at Request of Law Enforcement Officer	40/397
Drunken Driving; Blood Test; Willful Refusal to Submit	41/326
Drunken Driving; Blood Test to Determine Alcoholic Content; Persons Qualified to Give	40/429
Drunken Driving; Chemical Test	41/792
Drunken Driving; Chemical Test of Blood to	

Determine Alcoholic Contents	40/430
Drunken Driving; Chemical Test of Blood to Determine Alcoholic Content; Change of Charge	41/815
Drunken Driving; Conviction; Definition	40/400
Drunken Driving; Conviction; Definition; Conviction in Another State; Forfeiture of Bail; Limited Driving Privilege	40/401
Drunken Driving; Highway Patrol and Other Officers; Chemical Tests for Alcohol	40/401
Drunken Driving; Implied Consent; Effect of Acquittal on Drunk Driving Charge Upon Outstanding Charge for Driving While License Revoked	40/403
Drunken Driving; Plea Bargaining; Careless and Reckless Driving	42/71
Drunken Driving; Probable Cause	40/430
Drunken Driving; "Public Vehicular Area"	42/107
Drunken Driving; Revocation; Determination of Time Periods Within Which a Conviction Will Constitute a Second or Third Conviction for Purposes of Revocation of License	40/404
Drunken Driving; Riding a Horse on Street or Highway While Intoxicated	41/172
Equipment; Requirement to Wear Motorcycle Safety Helmets	40/431
Equipment and Construction; Bumper Specifications; Private Passenger Automobiles; G. S. 20-135.4	41/677
Equipment and Construction; Length of Pole Trailers	41/378
Equipment and Construction; Marking Vehicles Required to Stop at Railroad Crossings	40/432
Equipment and Construction; Overloads; Length Limitations on Vehicles	40/432
Equipment and Construction; Rock and Gravel Loads	41/708
Evidence; Impeachment; Use of Certified Master License Check of	40/434

Financial Responsibility Act of 1953; Applicability to Unsatisfied Judgments Arising Out of Accidents on Private Property	40/435
Gross Receipts Tax on Common Carrier Under Lease Agreement	40/437
Handicapped Drivers' Privileges; Constitutionality	41/769
Inspection; Reciprocal Agreements Not Entered Into; Grace Period for Vehicle Brought Into State	41/857
Insurance; Automobile Liability Insurance Policies; Termination Within Sixty-Day Period From Policy Inception; Effect of	40/326
Learner's Permit; Accompanying Driver May Hold Restricted Driving Privileges Under Certain Conditions	41/596
Liens; Priority of Ad Valorem Taxes Over Prior Perfected Liens and Security Interests	41/692
Liens; Wrecker Fees Not Included in Mechanic's Lien	41/38
Manufacturer's License	41/850
Municipal Regulation of Operation Based on Unnecessary Noise	40/484
Nonresident Defendants; Service of Process on Commissioner of Motor Vehicles; Acceptance of Service	41/567
Pedestrians Soliciting Rides, Employment, Business or Funds Upon Highways or Streets	41/528
Registration of Vehicles Belonging to Tree Farmers at Farmer Rate; G. S. 20-88(b)(2), (3), (4) and (5)	41/273
Registration Plates; Free Plates to Certain Veterans	40/439
Rock and Gravel Loads	41/708
Rules of the Road; Arrest Without Warrant; Evidence - Motion to Suppress Illegal	41/286

Rules of the Road; Flashing Red Traffic Signals	40/442
Rules of the Road; Speed; Failure to Decrease Speed to Avoid Collision	40/443
Rules of the Road; Volunteer Firemen; Applicability of Speed Limits	40/444
Salvage; Privilege License Tax	40/855
School Buses; Mechanical Stop Arm Requirements at Railroad Crossings	41/861
Speed Limits; City Ordinances; G. S. 20-141(f)(1) and 20-141(b)	41/167
Taxation; Ad Valorem; Situs; Leased Automobiles	40/822
Taxation; Gross Receipts and Franchise Tax; Lease Agreement	40/837
Taxicabs; Marking Under G. S. 20-101 Not Applicable to Taxicabs	41/547
Title and Registration; Perfection of Security Interests; Uniform Commercial Code	40/446
Title and Registration; Permanent Registration for Motor Vehicle Leased to a Municipality	41/798
Truck Routes; Municipal Regulation of Violations; Miranda Warning; Unnecessary to Give Warning to Motorists Being Questioned	41/156
	41/660

MUNICIPALITIES

Advertising; Use of Tax and Non-Tax Funds for	40/447
Alcoholic Beverages; Minors; Poolrooms	40/448
Aldermen, Board of; Authority of	40/450
Aldermen, Board of; Authority to Request Its Members to Investigate Various Departments and Make Recommendations to the Full Board	40/451
Annexation; Dissolution of Municipal Charter	40/453
Annexation; Withdrawal of Area Previously Annexed	40/454

Assessments for Local Improvements; Exemptions	40/454
Beer and Wine; Sunday Sales; State ABC Board Regulations; Power of Municipalities	40/15
Board of Municipal Control; Priority of Petitions; Holding Beach Corporation	40/455
Boundaries; Deeds and Conveyances	40/457
Boundaries; Session Laws; Municipal Charters; Boundary Between Towns of Yaupon Beach and Long Beach	41/909
Building Code; Electrical Code; Authority of City of Kinston to Apply Its Fee Schedule Against the County of Lenoir for Electrical Inspections of a County Hospital Located Outside but Within One Mile of the City Limits	41/93
Building Code; Electrical Code; Right of City to Vary State Building Code	40/458
Building Code; Plumbing Code; Master Plumbers	41/477
Civil Defense; Power of Local Political Subdivisions	40/62
Civil Defense Powers; Civil Defense or Riot and Civil Disorder Emergencies	41/2
Compromise Authority of Town Council; CATV Franchise	40/553
Contracts; Award of Contracts; Division of Contracts	41/823
Contracts; Bidding	41/187
Contracts; Competitive Bidding; Advertisement	40/459
Contracts; Inclusion of Sales Tax as "Expenditure of Public Money"; G. S. 143-129; 105-164.7; 105-164.14(c)	41/479
Contracts; Lease of Equipment with Option to Purchase; Compliance with Bidding Requirements of G. S. 143-129; Contract Let to Bid With Provision to Purchase Additional Property at Contract Price	40/460

Conveyance of City-Owned Property	40/461
Day-Care Centers; No Authority to Expend Municipal Funds	42/135
Donations and Appropriations; Private Rescue Organization; Lease for \$1 Per Year	40/462
Elections; Candidate for Aldermen Running at Large	40/463
Elections; Markers; Assistance to Voters	40/464
Elections; New Registration and Looseleaf System Required in Town of Murphy	40/465
Elections; Primaries; Single-Shot Voting	40/466
Elections; Registration of Transients; Qualification of Voters	40/467
Elections; Registration of Voters Between First and Second Primary	40/468
Elections; Statutory Construction G. S. 163-287; Time When Special Municipal Elections May be Held	41/881
Elections; Write-In Votes	40/469
Elections; Write-In Votes Authorized	40/470
Eminent Domain; Condemnation of City Hall Site; Streets; Closing Public Alley	40/470
Expenditure of Tax or Non-Tax Funds for Civic Center Outside Municipality Unlawful	40/471
Federal Aid Grants; Relocation Assistance Payments; Code Enforcement Program	41/896
Fire Protection; Furnishing Outside Corporate Limits	40/473
Form of Government; Method of Adopting City-Manager Form of Government	40/473
Franchises; Community Antenna Television; Authority of Municipal Corporations to Grant Franchise for CATV	40/474
Garbage Collection Outside City Limits; No Statutory Authority	40/476
Garbage Dump; Operation of With County	40/79

Group Life Insurance; Retired Employees	40/477
Housing; Authority of City Council to Adopt an "Open Housing" Ordinance	40/478
Housing Authorities; Redevelopment Commissions; Authority of Municipality to Render Financial Assistance; Contracts with Federal Government; Interest Rate in Excess of 6 Percent	40/480 40/482
Insurance; Health and Accident Insurance; Group Life Insurance	40/483
Intoxicating Liquors; Authority to Regulate Consumption & Display on Public or City-Owned Property	42/59
Labor Unions; Right or Authority of Municipal Corporation or a City to Check-off Labor Union Dues for the Benefit of a Labor Organization Composed of Its Employees	40/591
Lease of Real Estate of Town ABC Board	40/483
Motor Vehicles; Abandoned or Junked Vehicles; Removal from Private Property	42/47
Motor Vehicles; Permanent Registration for Motor Vehicle Leased to a Municipality Improper	41/798
Motor Vehicles; Regulation of Operation Based on Unnecessary Noise	40/484
Navigable Waters; Adverse Possession	40/484
Nuisances; Ordinance Regulating Dogs	40/485
Officers; Mayor as Presiding Officer; Voting Right	40/486
Ordinances; Authority to Enact; Proposed Durham Human Relations Ordinance	40/487
Ordinances; Filing and Recording With Register of Deeds; Subdivision Ordinances	41/752
Ordinances; Parking Meters; City of Raleigh	42/141
Ordinances; Repeal; Effect of Court's Construction of Repealed Ordinance on Substituted Ordinance	41/114
Parking; Authority for City of Washington to	

Contract with Merchants to Provide for Off-Street Parking Facilities	41/361
Parking Meters; Expenditure of Tax Funds to Purchase Token Ejecting Meters	40/490
Parks; Recreation; Not Necessary Expense	40/493
Parks; Reverter Clause in Deed Affecting Public Purpose of Park Under Constitution, Article V, Section 3	40/494
Police; Arrest; Power of Hot Pursuit	41/724
Police; Chief of; Residence	40/497
Police; Court Process Servers; Duties	41/892
Police; Injuries; City's Responsibility for Compensation When Policeman Injured While Moonlighting	41/911
Police; Jurisdiction of Chapel Hill Police Outside the Corporate Limits	40/496
Police; Jurisdiction Outside of Corporate Limits; Power of Arrest; Hot Pursuit	41/929
Police; Public Records	41/407
Police; Special Policemen; Jurisdiction of Morehead City Police on State Property Within City Limits; N. C. State Ports Authority; Authority of Town of Morehead City to Legislate by Municipal Ordinance Within Geographical Area Owned by Ports Authority	41/433
Policemen and Firemen; Residence	40/615
Policemen and Firemen; Residence Requirements	40/498
Pool Halls; Ordinances Outlawing	40/500
Powell Bill (See Streets & Highways; Municipalities; Powell Bill)	
Property; Contributions or Donations of Real Property Without Consideration to a Non-Profit Organization	40/500
Property; Conversion of Use When Property Acquired for Specific Use	40/502
Property; Purchase and Sale; Use of Open Spaces for Recreational Purposes	40/502
Property; Sale or Lease of Property by County	

or City Board of Education to Municipality; G. S. 160-61.2	41/597
Recreation; Authority of Town to Use Non-Tax Funds for Recreational Purposes	40/504
Recreation Commission; Tort Liability	40/505
Redevelopment Commissions; Advancements from City from Tax or Non-Tax Funds	40/506
Rescue Squad, Volunteer; Workmen's Compensation Coverage	40/507
Rural Fire District; Annexation	40/508
Sand Dune Protection; Authority of a County to Protect the Sand Dunes Along the Outer Banks in the Entire County, Including Any Municipality Located Therein	41/451
Sewer Assessments; No Authority for City to Reduce the Amount of the Assessment Per Front Foot When the Lot Has Not Been Benefited	40/509
Street Improvements; School Property; No Right of Individual Who Has Improved a Street Accepted By a Municipal Corporation for Permanent Maintenance to Make Assessment Against School Board Property Which Adjoins the Street	40/510
Streets and Highways; Allocation of Powell Bill Funds in 1971	41/518
Streets and Highways; Contracts Between State Highway Commission and Municipalities for Routine Maintenance By Municipalities of State Highway System Streets On Reimbursable Basis	40/511
Streets and Highways; Dedication, Offer and Acceptance Thereof	40/513
Streets and Highways; Enforcement of State Highway Commission Ordinance Within a Municipality	40/514
Streets and Highways; Expenditure of Municipal Funds on State Highway System Streets	40/515
Streets and Highways; No Authority to Contract for Payment for Project Completed Prior to Enabling Legislation	40/515

Streets and Highways; Parking; Penalties; Manner of Enforcement	40/518
Streets and Highways; Parking; Permits	40/519
Streets and Highways; Parking; Special Spaces	41/831
Streets and Highways; Powell Bill Funds; Expenditure for Drainage Purposes	41/656
Streets and Highways; Powell Bill Funds; Expenditure for Sidewalks	42/88
Streets and Highways; Powell Bill Funds; Expenditure on State Highway System Streets	42/85
Streets and Highways; Powell Bill Funds; TOPICS Program	41/359
Streets and Highways; Speed Limits; Effect of Ordinance in Absence of Signs	41/167
Streets and Highways; Tramways; Authority of City to Permit Overhead Tramways to Connect Buildings; Encroachments and Obstruction on Streets By Private Persons	40/520
Streets and Highways; Truck Routes	41/156
	41/735
Taxation; Privilege License Taxes; Levy on Newly-Annexed Territory	40/863
Term of Office of Alderman; Changing During Term	40/521
Tort Liability; Authority to Act Based on Unauthorized Representations by Individual Board Members	40/522
Water and Sewage Services; Lien on State-Owned Rental Dwelling	40/743
Water and Sewage Systems; Authority to Improve and Maintain Sewage Drains Extending Beyond Municipal Limits	41/12
Water and Sewer Systems; City Limits; Extension of Water Service Beyond	41/244
Water and Sewer Systems; Rates; Use of Surplus Funds	40/523
Water and Sewer Systems; Water System Outside Corporate Limits; Restrictive Covenants on Land	41/85
Water Resources Projects; Authority to Contract for With Secretary of Army	41/522

Waterworks; Uniform Rates Required	40/525
Zoning; Gaston Regional Planning Commission; Town of Mount Holly	40/526

N

NARCOTICS AND BARBITURATES

Indictment and Proof; Negating Exceptions	40/159
--	--------

NAVIGABLE WATERS

Closing Stream by State	41/314
-------------------------	--------

NORTH CAROLINA HOUSING CORPORATION

Appropriation by 1969 General Assembly; Payment to Housing Corporation	41/120
---	--------

NOTARIES PUBLIC (See Public Officers and Employees; Notaries Public)

Claim and Delivery; Taking Oath of Sureties on Plaintiff's Undertaking in a Claim and Delivery Action	40/64
---	-------

NURSING HOMES

County Loans to for Care of Welfare Patients; Reimbursement of County	40/701
County Payments; Requirements for Identifying Nature of Payments	41/557
Guaranteeing Availability of Bed; Unlawful for County Commissioners	41/555
Hospital-Operated Homes; Applicability of the Limitations of "Allowable Costs up to \$14.00 Per Day" in Appropriations Act of 1971	41/541
Hospital-Operated Homes; Combination Hospital, Nursing Home & Rest Home to be Licensed by Medical Care Commission	42/57
Medical Assistance Payments; Advance Payments Not Authorized	41/304

Not Residence for Purposes of Disqualifying Person Who Otherwise Eligible for Favorable Tax Treatment Under G. S. 105-277.1	41/725
Operation Without License	40/374

O

OATHS

Attorneys at Law; Who May Swear in Attorneys to Practice Law; G.S. 84-1; G.S. 11-7.1	42/82
--	-------

OIL AND GAS CONSERVATION ACT (See Conservation and Development; Oil and Gas)

ORDINANCES, MUNICIPAL (See Municipalities; Ordinances)

P

PARDON

Citizenship; Not Restored By	40/162
------------------------------	--------

PARENT AND CHILD

Social Services; Parent Requiring Child to Pay for Rent and Utilities	40/702
--	--------

PARKING METERS

Expenditure of Tax Funds to Purchase Token Ejecting Meters	40/490
---	--------

PAROLE

Citizenship Restored; "Date of Discharge" Refers to Parole Discharge	41/426
---	--------

PHYSICIANS

Blood Sample; Liability of Physicians Taking Blood Sample for Alcohol Content Test at Request of Law Enforcement Officer	40/395
--	--------

Blood Sample; Liability of Physician Taking Blood Sample for Alcohol Content Test From Unconscious Person at Request of Law Enforcement Officer	40/397
Conflict of Interest; Payments by the State Board of Public Welfare for Goods and Services Supplied By Physicians and Others Who Are Members of County Welfare Boards	40/660
Drug Addict Treatment; Use of Methadone	41/103
Juvenile Training Schools; Consent for Medical or Surgical Care	40/674
Social Services; Chiropractors May Receive Payments in Welfare Cases	40/705

PLUMBING & HEATING CONTRACTORS (See Licenses & Licensing; Plumbing and Heating Contractors)

POLICE (See Municipalities; Police)

POLL TAX (See Taxation; Poll Tax)

POLLUTION

Air Control Devices; Tax Benefits	40/781
	40/783
Air Pollution Control Program, Local; G. S. 143-215.3(a)(11); Responsibility for Prosecution of Violations of Local Air Pollution Ordinances	41/519
Air Pollution Control Program, Local; Jurisdiction of	40/526

PORTS AUTHORITY

Power of the Authority to Lease Authority Property to Private Investors	41/78
--	-------

POST JUDGMENT REMEDIES (Civil)

Executions; Clerk of Superior Court; Duty of Clerk to Issue Execution Under G. S. 1-306 Irrespective of Rule 62 of Rules of Civil Procedure	41/368
--	--------

Executions; Eviction; Rule 62, Rules of Civil Procedure; Applicability to Eviction Under G. S. 7A-225	40/529
Executions; Order by Clerk; Necessity of Description of Property	41/427
Executions; Sheriffs; Payment of Funds Received by Sheriff	40/530
Garnishment; Exemption of the State of North Carolina Federal Wage Garnishment Law to be Effective January 1, 1970	40/531

POWELL BILL (See Streets & Highways; Municipalities)

PRE-SENTENCE DIAGNOSTIC STUDY	
Appealability of Commitment for	41/67

PRISONS AND PRISONERS

Blood Test; Consent	40/533
Commitment to Commissioner of Correction	
Pending Appeal; Safekeeping of a County Prisoner	40/163
Compensation to Persons Erroneously Convicted of Felonies	40/534
Hard Labor as Punishment Prohibited; Prisoners May Be Employed	41/440
Medical Experiment; Prisoner Participation	40/535
Medical Treatment; Consent; Treatment Without Inmates' Consent	41/409
Medical Treatment; Liability for Hospitalization of Inmate in Various Factual Circumstances	42/38
Medical Treatment; Liability of Troopers for Medical Services Rendered to Prisoners	42/2
Parole; Citizenship Restored	41/426
Parole; Conditional Release of Youthful Offender	42/83
Parole; Mentally Ill; Parole of Convict Committed to Mental Hospital	41/550
Police Protection; Duty of Department of Correction to Provide	41/582

Pre-sentence Diagnostic Study; Appealability of Commitment for	41/67
Safekeepers; Discipline and Liability	40/537
Sentences; Department of Correction; Commitment; Time Sentence Begins	41/292
Sentences; Inmate Committed for "a period not to exceed 25 years" is Serving a Determinate Sentence of 25 Years	42/68
Sentences; Responsibility of the N. C. Department of Correction Regarding Commitments for a Term in Excess of that Provided for by Statute	41/291
Work Release; Money Retained Subject to Court Order	40/539
Workmen's Compensation Coverage	41/398
Youthful Offender; Conditional Release	42/83

PRIVATE DETECTIVES

Bank Employee's Investigation of Credit Card Fraud	40/378
Concealed Weapons; No Authority to Carry	41/270
Requirement for Licensing and Bond; Article 9A, G. S. 66	41/452

PRIVILEGE LICENSE TAX (See Taxation; Privilege License Tax)

PROBATION

Revocation of; Clerk's Authority of Commitment	41/847
Revocation of; Juveniles; Undisciplined or Delinquent Children	40/672
Termination of; Juveniles; Majority As Termination	41/771

PROFESSIONAL CORPORATION ACT

Applicability to Corporations in Existence Prior to June 5, 1969; Architects	40/58
Domestication of Foreign Corporations	41/934
Domestication of Foreign Professional Corporation	40/46

Foreign; Applicability of Act	41/60
Licenses and Licensing	40/377

PUBLIC CONTRACTS

Bidding; Advertisement	40/459
Bidding; Advertisement; Sales Tax Included to Determine "Estimated Expenditure of Public Funds"	41/479
Bidding; Changes in Plans After	41/392
Bidding; Conditional Bids	41/394
Bidding; Exceptions	40/736
Bidding; Factory-Installed Electrical, Heating and Plumbing Facilities; Separate Bids Required; G.S. 143-128	42/129
Bidding; Lease Agreement; Necessity of Compliance With Public Bidding Requirements	41/504
Bidding; Modification of Bid by Telegram	41/187
Bidding; Municipal Corporations; Receipt of "No Bid" Note Not a Bid	40/541
Bidding; Necessity of Compliance With Statutory Provisions for State Agency Purchase of Computer	41/48
Bidding; Real Estate Licensing Board	40/381
Bidding; Single Bid; Acceptance Authorized	41/527
Bidding; Utilities; Exemption of Motor Carriers from Public Bidding Requirements; Utilities Commission Jurisdiction	41/825
Highway Commission; Public Building Work Not Performed by Commission Personnel	41/252
Highway Rest Area Structure; Part of Highway Construction	40/541
Law Enforcement Equipment; Authority for State Department of Administration to Purchase Equipment for Local Affairs Department Grants to Local Government	40/751
Materials, Supplies and Equipment; Lowest Responsible Bidder	40/545
Race Segregation; Records Required by Federal Regulation	40/549

Separate Contracts Required for Certain Portions of Work Under Public Building Contracts	40/550
Splitting Contract After Bidding Not Permitted	41/823

PUBLIC DEFENDER (See Courts)

PUBLIC HEARINGS

Education, County Boards of; Authority to Hold Executive Sessions; Disclosure to the Public When Executive Sessions Will Be Held; Public Report as to Action Taken in Executive Session; Ratifying in a Public Meeting Matters Decided in an Executive Session	40/231
--	--------

PUBLIC OFFICERS AND EMPLOYEES

ABC Employees; Not Employees of the Municipality or County	42/28
ABC Officers; State Officers Assisting in Riots; Power of Arrest; Workmen's Compensation Coverage	40/552
College and University Faculty; Annuity or Retirement Income Contracts	42/6
Compromise Authority; Municipality CATV Franchise	40/553
Conflict of Interest; ABC Administration	41/330
Conflict of Interest; ABC Store Employee and Town Board Member	40/570
Conflict of Interest; Board of Elections; Member of Board May Not Serve as Executive Secretary of Board	41/577
Conflict of Interest; Contracts Between Member of City Council and Municipality	40/556
Conflict of Interest; County ABC Deposit of Funds in Bank in Which Chairman Is President	40/559
Conflict of Interest; County Commissioner's Authorization of Food Stamp Program in County Where 2 Commissioners are Merchants	

Who Could Derive Benefit From the Program	41/530
Conflict of Interest; County Commissioners; Employment by County	40/560
Conflict of Interest; County Physician Serving as County Commissioner; G. S. 14-234	41/765
Conflict of Interest; Mayor and Housing Authority President	40/561
Conflict of Interest; Mayor May Not Be a Salaried Employee of the Town	40/563
Conflict of Interest; Municipal Board of Adjustment Member as Appraiser and Real Estate Broker	40/564
Conflict of Interest; Not Conflict for Member of Family on Board of County Commissioners and Another Member in County Department of Social Services	40/292
Conflict of Interest; Officer Contracting for His Own Benefit; G.S. 14-234; County Commissioner Who is Officer of Corporation	42/9
Conflict of Interest; Officer Contracting for His Own Benefit; G.S. 14-234; Town Alderman Who is Officer of Corporation	41/371
Conflict of Interest; Purchase of Automotive Parts from Member of Board of County Commissioners	40/564
Conflict of Interest; Sale of Surplus Property by Municipality; Purchase by Employees	41/276
Conflict of Interest; School Board Member as Employee of Company Contracting with Board; Board Member as Shareholder in Company whose Wholly Owned Subsidiary Contracts With Board	40/565
Conflict of Interest; University Employing a Member of Its Board of Trustees	40/566
Continuation of Office Despite Vacancy; Injunction; Appeal Does Not Continue the Injunction Which Has Been Dissolved	40/567

Coroners; Abolishing Office or Reducing Salary During Term of Office	40/568
Coroners (See also Public Officers & Employees; Medical Examiners & Coroners)	
Counties; Salaries of Officers; Conflict in Local and General Acts	41/22A
County Commissioners; Filling of Vacancy; Appointment for Unexpired Term; G. S. 153-6	41/622
County Commissioners; Power to Remove Officials When No Term By Statute; County Planning Board	41/230
County Officers; Salaries; Authority to Increase in Election Year	40/569
County Social Services; Salary of County Director; Applicability of State Personnel Act; Authority of Board of County Commissioners	41/696
Double Office Holding; ABC Board Member; Magistrate of District Court	40/570
Double Office Holding; ABC Store Employee; Conflict of Interest	40/570
Double Office Holding; City Policeman Serving Two Towns	40/571
Double Office Holding; Commissioner Serving as Member of Welfare Board, Trustee of Technical Institute, Member of North Carolina Department of Mental Health	40/571
Double Office Holding; Constitutional Construction; G. S. 128-1.1; Article VI, Section 9, N. C. Constitution; U. S. Postal Employees	41/633
Double Office Holding; County Auditorium Commissioner and Board of Education Member; Member of Town Council and County Joint Planning Board	40/572
Double Office Holding; County Board of Welfare Chairman	40/574
Double Office Holding; County Registrar and Judges Serving in Municipal Elections	40/574

Double Office Holding; County Social Services Board and County School Board	42/116
Double Office Holding; General Assembly Member Serving As Trustee of State Colleges and Universities; Commissioners of Public Charities	40/575
Double Office Holding; Housing Authority; County Commissioner Serving as Housing Authority Commissioner	40/580
Double Office Holding; Mayor and County Electrical Inspector	40/581
Double Office Holding; Mayor and County Tax Lister	40/582
Double Office Holding; Medical Examiner System	40/582
Double Office Holding; Medical Examiners and Coroners; County Medical Examiner; Coroner; Member of School Board; Coroner As Acting Medical Examiner	40/583
Double Office Holding; Members of County Board of Elections May Not Hold Another Elective Office Concurrently; G. S. 163-30; G. S. 128-1.1; Article VI, Section 9, N. C. Constitution	41/793
Double Office Holding; Postmaster and Member of City Board of Education	40/585
Double Office Holding; Precinct Registrar and Register of Deeds	40/614
Double Office Holding; Register of Deeds; Clerk to the Board of County Commissioners	41/194
Double Office Holding; Special Police	40/585
Double Office Holding; Supervisor of County Secondary Schools & City Council Member	40/586
Double Office Holding; Town Clerk Serving As Registrar	40/587
Double Office Holding; Watershed Improvement Commission	40/588
Double Office Holding; Zoological Authority and Town Board; Two Public Offices	40/589
Firemen; Residence Requirements	40/615

General Assembly; Salaries and Fees; Subsistence of Principal Clerks, Reading Clerks, Sergeants-at-Arms	40/310
Highway Patrol; Liability of Troopers for Medical Services Rendered to Patients	42/2 40/590
Holding Over; Compensation	40/590
Holding Over; State Board of Assessment; G. S. 105-288	41/458
Insurance, Group Life; Retired Personnel Not Included	40/477
Insurance, Health and Accident Insurance; Group Life Insurance	40/483
Labor Unions; Contracts Between Units of Government and Labor Unions	40/591
Labor Unions; Right or Authority of Municipalities to Check-off Labor Union Dues for the Benefit of a Labor Organization Composed of Its Employees	40/591
Legal Defense of; Authority of Board of County Commissioners to Pay Attorneys' Fees in Civil Action Against Sheriff	40/593
Legal Defense of County Commissioners; Payment of Attorney Fees in Defense of Election Officials	40/594
Mayor of Municipality; Powers and Duties of	40/486
Medical Examiners; Authority of Chief Medical Examiner to Act As County Medical Examiner	40/595
Medical Examiners; Authority of County Medical Examiner to Order Autopsy	40/596
Medical Examiners & Coroners; Adoption of Ch. 152A, Effective Date of Ordinance	40/598
Medical Examiners & Coroners; Chief Medical Examiner; Counties Without Medical Examiners; Investigations of Deaths; Autopsies; County Health Director as County Medical Examiner	40/599
Medical Examiners & Coroners; Investigation of	

Deaths; Authority to Remove Dead Body	41/117
Medical Examiners & Coroners; Removal of Body of Deceased Motor Vehicle Accident Victim From Scene of Accident	40/601
Minors; Persons Under 21 Years of Age May Not Serve on Recreation Commissions or Boards	40/603
Notaries Public; Fees; Form of Seal, Oath of Office; Persons 18 Years of Age May be Notary	41/435
Notaries Public; Mark of Stamp	40/604
Notaries Public; Register of Deeds Administering Oath to Notaries; Transfer of Duties From Clerks of Superior Court	40/605
Notaries Public; Register of Deeds; Certificates of Out-of-State Notaries	40/606
Notaries Public; Register of Deeds; Probate of Notarized Instruments Not Containing Date of Expiration of Notary's Commission; G. S. 10-7 and 47-14(a)	41/225
Oaths of Office; No Authority of Federal Judge to Administer	41/740
Police, Special; Arrest Powers	40/164
Policemen; Off-Duty Police Officers; Power of Arrest; Moonlighting	41/911
Policemen; Workmen's Compensation for Injury Outside Corporate Limits	40/181
Private Use by Physicians of State Facilities	42/58
Public Defender (See Courts; Public Defender)	
Publications; Law Books Distributed Pursuant to G. S. 147-45 or Purchased With Facilities Fees Belong to the Office	41/176
Qualifications for Public Office; Non-Belief in Existence of God as Disqualification for Office; Article VI, Sections 8 and 13, N. C. Constitution; First and Fourteenth Amendments, U. S. Constitution	41/727
Register of Deeds; Appointment of Assistant	

or Deputy Registrar; Person 18 Years of Age or Over May be Appointed as Deputy or Assistant Register of Deeds	41/476
Register of Deeds; Appointment of Assistants; Fixing Compensation	40/609
Register of Deeds; Fees	40/610
Register of Deeds; Fees for Probate of Instruments for Registration	40/611
Register of Deeds; Fees; Uniform Fees	40/612
Register of Deeds; Microfilming of Deeds, Mortgages and Deeds of Trust	40/613
Register of Deeds; Municipalities; Ordinances; Filing and Recording Subdivision Ordinances and Amendments Thereto; Article 19, Chapter 160A	41/752
Register of Deeds; Oaths; No Authority for Assistant Register of Deeds to Administer Oaths; Assistant Register of Deeds Acting As Precinct Registrar	40/614
Register of Deeds; Salaries; Excise Stamp Tax	40/614
Residence Requirements; Policemen and Firemen	40/615
Residence Requirements; Recreation Commission	40/617
Residence Requirements; Sheriff's Deputy; Not Required to Reside in County	41/754
Residence Requirements; State Highway Patrol	40/617
Retirement; Judges; Applicability of G. S. 7A-4.20 to District Court Judges	41/763
Retirement; Local Governmental Employees' Retirement System; District Health Department; Participation; No Necessity for Individual County Approval	40/619
Retirement; Local Governmental Employees' Retirement System; Entity for Purposes of; Charter Commission, Charlotte-Mecklenburg	40/619
Retirement; Local Governmental Employees'	

Retirement System; Entity for Purposes of; Regional Government Council; Social Security	40/620
Retirement; Local Governmental Employees' Retirement System; Entity for Purposes of; Sanitary Districts; Social Security	40/621 40/622
Retirement; Taxation; Taxability of Legislative Retirement Pay and Benefits in Excess of Member's Contributions	41/744
Retirement; Teachers' and State Employees' Retirement System; Computation of Benefits	40/623
Retirement; Teachers' and State Employees' Retirement System; Creditable Service; Sick Leave; Not Creditable to Meet Disability of Early Retirement Minimum Years of Service	41/1
Retirement; Teachers' and State Employees' Retirement System; Creditable Service; Sick Leave; Sick Leave Earned Prior to Membership	40/624
Retirement; Teachers' and State Employees' Retirement System; Creditable Service; Sick Leave; Use for Purpose of Meeting 30 Years Service Qualification	41/101
Retirement; Teachers' and State Employees' Retirement System; Membership; Public School Teachers; Compulsory Membership; No Exemption for Member of Religious Order	40/625
Retirement; Teachers' and State Employees' Retirement System Vesting Requirements; Application of Differing Vesting Right Period Requirements; Transfer of Service Credit Out of State	40/627
Salaries; County Elections Board Executive Secretary; Authority of County Commissioners in Budget Appropriations	41/40
Sheriffs; Duties and Responsibilities in	

Connection with Various Undertakings and Bonds; Claim and Delivery; Attachment; Bail	40/628
Sheriffs; Warrants; Duties Regarding Service of Criminal Process	40/188
Sheriffs, Deputy; Qualifications for Holding Office; Residency; Article VI, Section 6, N. C. Constitution	41/754
Social Security; Entity for Purposes of; Hospital, Forsyth Memorial; Status of Employees	40/631
Social Security; Entity for Purposes of; Regional Government Council	40/620
Social Security; Entity for Purposes of; Sanitary District	40/621 40/622
State Employees; Deduction from State Employees' Wages; Wage Earner's Plan; Ch. XIII of Bankruptcy Act	41/277
State Employees; Education Loans; Loans to Employment Applicants in the Form of the Payment of an Educational Loan Previously Made by the State Board of Social Services	41/318
State Employees; Group Life Insurance; Statutory Limit on Amount of	40/631
State Employees; Personnel Act; Exemptions; Effect of Reorganization; Continuation of Statutory Exemption of Certain State Employees	41/602
State Employees; Workmen's Compensation Act; Travel by Private Plane	41/464
Succession in Office; Education	40/632
Tax Sheltered Annuities; Authority of Employees to Avail Themselves of the Privilege of Purchasing Tax Sheltered Annuities	40/633
University of N. C. Board of Governors; Officers and Employees of State Not Eligible to Serve; G. S. 116-7	41/623
Vacancies; Clerk of Superior Court; Term of Office	41/686
Workmen's Compensation; Receiving Wages and	

Temporary Total Disability Payments Under the Workmen's Compensation Act at the Same Time	40/634
Workmen's Compensation; State Highway Patrol	42/136

PUBLIC RECORDS

Evidence; Department of Motor Vehicles Records; Sufficiency to Prove Fact of Revocation of Driver's License	40/394
Farm Census; Release of Information Secured by	40/724
Inspection of	40/636
Inspection of; State Bureau of Investigation; Authority of Clerk of Superior Court to Compel Production	40/730
Meat Inspection Act; Reports by Meat Inspectors	41/468
Police Departments; Arrest and Disposition Records Subject to Public Examination	41/407
Publications of State Departments; Free Distribution on Request to Statutory List of Institutions; G.S. 147-50	42/94
Social Services; Records; Duties of the County Auditor	40/709
State and County Departments; Furnishing Information to a Social Service Agency or Exchange for Purposes of a Survey	40/713
Veterans to Receive Free Copies	40/636

PUBLIC SALES

Surplus Education Property; Conformity to Statute Relating to Judicial Sales of Real Property; Confirmation of Bids	40/253
--	--------

PUBLIC UTILITIES (See "Utilities")

PUBLICATIONS

Law Books Distributed Pursuant to G. S. 147-45 or Purchased With Facilities Fees Belong to the Office	41/176
---	--------

R

REAL ESTATE LICENSING BOARD (See Licenses &
Licensing; Real Estate Licensing Board)

REDEVELOPMENT COMMISSIONS

Eminent Domain; Attorneys' Fees	40/637
Financial Assistance; Authority of Municipality to Render; Contracts With Federal Government; Interest Rate in Excess of 6 Percent	40/480 40/482
Municipalities; Advancement From City From Tax or Non-tax Funds	40/506
Tax Refunds; Gasoline	41/585

REGISTER OF DEEDS (See Public Officers & Employees;
Register of Deeds)

Clerk to Board of County Commissioners; Not Double Office Holding	41/194
Probate of Notarized Instruments Not Containing Date of Expiration of Notaries' Commission	41/225

RELOCATION ASSISTANCE

Litigation Expense and Purchase of Remnants	41/234
State Department; Authority of State and Any Political Subdivisions to Comply with Federal Law in Connection with Relocation Assistance	42/104

RELOCATION; HIGHWAY RELOCATION ASSISTANCE ACT (See
Streets and Highways; Highway Relocation
Assistance Act)

REORGANIZATION OF STATE GOVERNMENT (See "State
Departments, Institutions and Agencies;
Reorganization")

RESCUE SQUADS

Federal Grant-in-Aid Funds for Eastern Band of Cherokee Indians	41/165
--	--------

RESCUE SQUADS, VOLUNTEER

Workmen's Compensation Coverage 40/507

RESIDENCE

Motor Vehicles; Driver's License; New or
Nonresidents; Definition of
Resident 40/427

Social Services; Requirement of One Year's
Residence for Receipt of Benefits
Unenforceable 40/712

Taxation; Ad Valorem Taxes; Situs; Domicil;
Effect of Marriage to Nonresident Serviceman
Upon Taxation of Personalty Owned by Woman
Who Was Legal Resident of County Before
Marriage 40/825

Taxation; Nursing Home Not Residence for
Purposes of Disqualifying Person Who
Otherwise Eligible for Favorable Tax
Treatment Under G. S. 105-277.1 41/725

REST HOMES

Hospital-Operated Homes; Combination Hospital,
Nursing Home & Rest Home to be Licensed
by Medical Care Commission 42/57

Taxation; Ad Valorem Taxation
Exemptions 42/99

RETIREMENT

Local Governmental Employees' Retirement System;
District Health Department; Participation;
No Necessity for Individual County
Approval 40/619

Local Governmental Employees' Retirement System;
Entity for Purposes of; Charter Commission,
Charlotte-Medklenburg 40/619

Local Governmental Employees' Retirement System;
Entity for Purposes of; Sanitary 40/621
Districts 40/622

Teachers' and State Employees' Retirement System;
Computation of Benefits 40/623

Teachers' and State Employees' Retirement System;
Creditable Service; Sick Leave; Not

Creditable to Meet Disability or Early Retirement Minimum Years of Service	41/1
Teachers' and State Employees' Retirement System; Creditable Service; Sick Leave; Sick Leave Earned Prior to Membership	40/624
Teachers' and State Employees' Retirement System; Creditable Service; Sick Leave; Use for Purpose of Meeting 30 Years Service Qualification	41/101
Teachers' and State Employees' Retirement System; Membership; Public School Teachers; Compulsory Membership; No Exemption for Member of Religious Order	40/625
Teachers' and State Employees' Retirement System; Vesting Requirements; Application of Differing Vesting Right Period Requirements; Transfer of Service Credit Out of State	40/627

RIVERS AND STREAMS

Navigable Waters, Closing of	41/314
------------------------------	--------

RULES OF CIVIL PROCEDURE

Rule 27(b); Clerk's Authority to Order Deposition to Prepare a Complaint	41/618
Verification of Complaint; Default Judgment; G. S. 1-75.11	41/625

RURAL FIRE PROTECTION DISTRICTS

Annexation by Municipality	40/508
Contracting With Municipal Fire Department for Fire Protection	40/639
County Tax Funds; Not To Be Used for District Which Is Not County-Wide	41/210
Driveways, Paving of; State Highway Commission Has Discretion as to Paving of Driveways of Rural Fire Protection District Fire Houses	41/613
Elections; Petition Requesting Tax Levy of Less than 15 Cents	40/639

Elections Conducted by County Board of
Elections; Registration

41/895

S

SALES & USE TAX (See Taxation; Sales & Use Tax)

SAND DUNE PROTECTION

Authority of a County to Protect the Sand Dunes
Along the Outer Banks in the Entire
County, Including Any Municipality
Located Therein

41/451

Outer Banks; Administration of Programs;
Authority of State and County
Government; Article 3,
Chapter 104B, General Statutes

41/874

SANITARY DISTRICTS

Merger Election

40/641

SAVINGS AND LOAN ASSOCIATIONS

Interest; Banks; First Mortgage Loans; Mortgages
of Less Than Ten Years

40/54

Land Development Business

40/59

SEARCH AND SEIZURE (See Criminal Law & Procedure)

SECURITY INTERESTS (See Uniform Commercial Code)

SESSIONS OF COURT (See Courts)

SEWER ASSESSMENTS (See Municipalities)

SHERIFFS

Detention of Inebriates and Mentally Ill
Persons

42/43

Jail Fees - Uniform; Payment by County of Jail
Fees to Sheriff

40/90

Jails; Duty of Sheriff to Transfer Prisoners
to Adjoining County

42/127

Legal Defense of; Authority of Board of County
Commissioners to Pay Attorneys' Fee in Civil
Action Against Sheriff 40/593
See also Public Officers and Employees; Sheriffs

SOCIAL SECURITY

Entity for Purposes of; Hospital, Forsyth
Memorial; Status of Employees 40/631
Entity for Purposes of; Regional Council;
Piedmont Triad Council of
Governments 40/620
Entity for Purposes of; Sanitary 40/621
Districts 40/622
Medicaid; Lack of Authority for the State to
Pay More Than 50 Percent of the
Non-Federal Share of Non-Administrative
Program Costs 41/151

SOCIAL SERVICES

Abandonment Proceedings in the Juvenile Division
of District Court 40/642
Adoption of Adults; Effect of Individual
Concerned Reaching Majority Before Entry
of Final Order 41/918
Adoption of Minors; Appointment of County
Director or Acting Director of Public
Welfare to Serve As Next Friend to Give
or Withhold Consent 40/643
Adoption of Minors; Appointment of
Non-Abandoning Parent to Give Consent to an
Adoption As Next Friend of the Child;
Unlawfulness of Such Appointment 40/644
Adoption of Minors; Award of Custody by Domestic
Relations Court; Subsequent Finding of
Abandonment by a Court of Adoption; Award
of Custody Upon Dismissal of an Adoption
Proceeding; Sufficiency of Finding of
Abandonment Made During an Adoption
Proceeding for the Purposes of a Subsequent
Adoption Proceeding 40/645
Adoption of Minors; Consent by Department and
Surrender of Child; Authority in Absence
of County Director 40/648

Adoption of Minors; Effect of Statutory Change in Definition of a Minor	41/599
Adoption of Minors; Finding of Abandonment by the Clerk of Court; Time for Appointment of Next Friend	40/649
Adoption of Minors; Finding of Abandonment Made by the Clerk or by a District Court Judge; Transfer of Cases Between Trial Divisions	41/751
Adoption of Minors; Petitioner Acting As His Own Attorney	40/650
Adoption of Minors; Sale of Adopted Child's Realty Upon Appointment of a Next Friend; Use of the Child's Non-Adoptive Name in the Proceeding Relating to the Sale; Furnishing Information From State Department of Social Services Adoption Records to a Clerk of Court; Lawfulness of Appointment of Guardian Under G. S. 48-30 or Chapter 33 of the General Statutes	40/650
Adoption of Minors; Venue; Waiver; Removal of Proceedings From One County to Another	41/180
Aid to the Aged and Disabled; Migrant Workers	41/274
Aid to Families with Dependent Children; Eligibility of Children for Assistance Although Parent Does Not Qualify As a Payee	40/652
Aid to Families with Dependent Children; Payments; Lawfulness of Action of the State Board of Social Services in Setting Amounts of Payments Beginning January 1, 1970	40/653
Aid to Families With Dependent Children; Payments on Behalf of Persons Who Are Over Eighteen Years of Age and Who Are Undergoing a Course of Study or Training	41/593
Alimony and Child Support Actions; Enforcement by Contempt Proceedings	40/654

Appropriations; Physicians; Funds Used for Chiropractors	40/705
Blind, Assistance for; Administrative Funds; Payments to County Treasuries	41/329
Blind, Assistance for; Necessity for Amendment Eliminating the Residence Requirement of One Year	40/655
Blind, Assistance for; U. S. Supreme Court Decision Declaring Invalid Certain Residence Requirements In the Case of Aid to Families With Dependent Children Programs; Unenforceability of One Year Residence Requirements in General Statutes Chapter 111 Pertaining to Assistance for Blind Persons	40/656
Child Welfare Services; Social Security Amendments of 1967; Mandatory Requirement for Day-Care in Case of Families Receiving Aid to Families With Dependent Children Assistance	40/657
Conflict of Interest; Lawfulness of Acceptance of Payments by a Physician From the State Board of Public Welfare for Reading X-Rays for Welfare Patients While the Physician is Serving As a Member of the County Welfare Board	40/659
Conflict of Interest; Physicians; Payments by the State Board of Public Welfare for Goods and Services Supplied by Physicians and Others Who Are Members of County Welfare Boards	40/660
Contracts for the Handling of the Family Assistance Program	41/698
Contracts With Private Organizations; Contracts with Organizations Described in Chapter 57 of the General Statutes; Authority of the Board to Pay for Services	40/714
County Welfare Boards; Disclosure of Minutes of Meetings	40/661
Custody of Children; Custody and Jurisdiction Over a Child Placed in a Mental	

Institution By a County Department of Public Welfare	40/662
Director of Social Services Accepting and Holding Funds for Benefit of Former Inmates of County Homes	40/663
Family Assistance Program; Contracts for the Handling of the Family Assistance Program	41/698
Federal Social Security Act; Statutory Authority for Title XIX Programs Including a Dental Program and Payments to State Hospitals	40/664
Federal Social Security Act; Title XIX (Medicaid); Lack of Authority for the State to Pay More Than 50 Percent of the Non-Federal Share of Non-Administrative Program Costs	41/151
Foster Home Fund; Care in Institutions or Group Care Homes as Constituting Foster Care; G. S. 108-66	41/384
Foster Home Fund; Noneligibility of Persons Who are 18 or More Years of Age	42/8
Increase in Payments; Authority of State Board to Order a Uniform Raise in Welfare Payments Without Processing Each File Under G. S. 108-43	40/703
Information; Furnishing to a Social Service Agency or Exchange for Purposes of a Survey	40/713
Investigation of Alleged Child Abuse by County Welfare Director	40/666
Jails (See Jails)	
Juveniles; Abortions; Sufficiency of Consent of County Director of Social Services	41/862
Juveniles; County Departments of Public Welfare; Responsibility for Transportation; Medical Examinations and Blood Tests for Juveniles	40/666
Juveniles; Custody; Duration of Custody of County Social Services Department	40/316
Juveniles; District Court Venue	40/669

Juveniles; Fingerprinting and Photographing Juveniles	40/670
Juveniles; Inapplicability of Article 2A, Chapter 110 to County Not in District Court System	40/671
Juveniles; Interstate Compact on; Responsibility for the Costs of Returning a Juvenile to North Carolina	40/671
Juveniles; Medical Care; Sufficiency of Consent by County Department of Social Services	42/101
Juveniles; Probation; Termination Under Interstate Compact on Juveniles	42/117
Juveniles; Probation of	41/350
Juveniles; Probation of; Effect of Commitment to and Conditional Release from the Custody of the Board of Youth Development	41/914
Juveniles; Termination of Probation	41/771
Juveniles; Undisciplined or Delinquent Children; Revocation of Probation	40/672
Juveniles; Visitation Rights of Father If Custody Given to the Mother	40/673
Juveniles; Wards of the State; Effect of Placement of Custody by Judge of Juvenile Court	42/88
Juvenile Training Schools; Physicians and Surgeons; Consent for Medical or Surgical Care	40/674
Juvenile Training Schools; Transporting to	40/677
Legal Services; Payments by the State Board for Legal Services for Poor Persons	40/677
Legal Settlement; Care Provided for a Mentally Incompetent Indigent	40/678
Liens; Applicability of Lien Individually Against Property of Husband and Wife	40/679
Liens; Applicability to Land Lying in First County by Virtue of Welfare Payments by the Second County	40/680
Liens; Applicability to Property Sold by the Welfare Recipient	40/682

Liens; Applicability to Realty Acquired After the Filing of the Lien; Applicability of Liens to Inherited Realty; Reserves Permitted in Determining Eligibility for Assistance, Absence of any Intent or Authority to Limit or Affect Liens	40/682
Liens; Determination of Priority	40/689
Liens; Effect of Conveyance of Realty Concerning Welfare Payments Made After the Conveyance	40/684
Liens; Enforcement of When the Liennee is Still Receiving Aid	40/685
Liens; Extent of Priority of Funeral Expenses	40/686
Liens; Filing and Refiling of; Use of Rubber Stamp As the Signature of the Director of Social Services	40/686
Liens; Filing of Lien After Death of Welfare Recipient	40/687
Liens; Income from Trust	40/688
Liens; Mental Health; Determination of Priority	40/689
Liens; Mental Health; Extent to Which Property of a Patient Must Be Considered Assets of the Patient in Determining His Eligibility for Medical Assistance to the Aged Welfare Payments; Sale of Realty By Patient and Application of Proceeds in Full or Partial Satisfaction of the Lien; Eligibility for Medical Assistance to the Aged Not Affected By Such Sale and Application of Proceeds By the Patient	40/689
Liens; Priority of Demolition Lien Over Welfare Liens	40/691
Liens; Release of; Adequacy of Disinterested Appraisal	40/695
Liens; Release of by CSC When No Action Taken By the County Within Three Years After the Death of the Recipient	40/696
Liens; Release of; Necessity for Payment to the County of Full Market Value	40/699

Liens; Sale of Old Age Assistance Recipient's Life Estate; Nature of County's Rights as to Proceeds of the Sale and As to the Land Sold	40/698
Liens; Statute of Limitations; Welfare Claims	40/700
Liens; Statutes of Limitations or Conditions Precedent; Tolling of Statutes of Limitations	41/185 41/186
Medical Assistance; Elimination of a Category of Services; Elimination of a Category of Persons	41/18
Medical Assistance; Frequency of Payments by the State; Reimbursement by the County for Their Share of Medical Assistance Costs	41/615
Medical Assistance; Nursing Home Services Provided by Hospitals; N. C. Appropriations Act of 1971; Applicability of the Limitation of "Allowable Costs Up to \$14.00 Per Day"	41/541
Medical Assistance; Nursing Homes; Counties Guaranteeing Availability of Beds Unlawful	41/555
Medical Assistance; Obligation of Counties; Method of Raising Revenue	41/264
Medical Assistance; Payment of All Non-Federal Costs by the State for Indians on Certain Reservations	41/140
Mental Institutions; Legal Settlement	41/472
Nursing Homes; County Fiscal Control Act; Requirements for Identifying Nature of Payments	41/557
Nursing Homes; County Loans to Private Nursing Homes for Care of Welfare Patients; Reimbursement of County From Funds Received by County Under Title XIX of the Federal Social Security Act and Chapter 108 of the General Statutes	40/701
Nursing Homes; Direct Payments to Nursing Homes; Payment in Advance for Nursing Home Services	41/304

Nursing Homes; Social Security Act; Medical Assistance, Counties and County Commissioners Guaranteeing of Availability of Beds	41/555
Parent and Child; Parent Requiring Child to Pay for Rent and Utilities	40/702
Payments; Authority of State Board to Order a Uniform Raise in Welfare Payments Without Processing Each File Under G. S. 108-43	40/703
Payments; Frequency of	40/703
Payments; Reduction of or Elimination of Categories of Services or Persons to Whom Payments Are Made	41/18
Pharmacies; Authority of State Board of Social Services to Make Payments to County-Owned Pharmacies for Drugs Dispensed to Welfare Recipients	40/704
Physicians; Limitations on Types of Practitioners Who May Receive Payments From the Department of Social Services	40/705
Records; Duties of the County Auditor	40/709
Removal of a Child From the State in Violation of a Custody Order	40/711
Residence Requirement for Receipt of Benefits Unenforceable	40/712
Solicitation; Licensing of Public Solicitation; Applicability of Solicitation Statutes to State Agencies and Personnel	40/712
Sterilization (See Infants & Incompetents; Sterilization)	
Support, Enforcement of; Special County Attorney; Duties	40/715
Support, Responsibility for Initiating Uniform Reciprocal Enforcement of Support Actions; Special County Attorneys	40/717
Support; Uniform Reciprocal Enforcement of Support Act; Style of Case Showing the Mother as Complainant, the Dependent Children Being Identified in the Body of Document Filed With the Court; Order of Support	40/718

Tubercular Patients Committed; Payment by a County for Care of Persons So Committed	40/719
Work Incentive Program; Mandatory	40/719

SOIL AND WATER CONSERVATION DISTRICTS

Authority of Soil and Water Conservation Districts to Act As Vendor of Particular Products	40/722
--	--------

SOLDIERS AND SAILORS CIVIL RELIEF ACT

Taxation; Sales and Use Tax; Liability for Payment of North Carolina Use Tax on Motor Vehicles and Other Tangible Personal Property Purchased Outside North Carolina for Use in This State by Nonresident Servicemen Stationed in North Carolina	40/887
--	--------

SOLICITATION

Licensing of Public Solicitation; Applicability of Solicitation Statutes to State Agencies and Personnel	40/712
--	--------

SPECIAL POLICE

Campus Police; Scope of Arrest Authority; Carrying Concealed Weapons	41/270
Public Officers Within Constitutional Prohibition of Double Office Holding	40/585
(See also Company and Special Police)	

STATE DEPARTMENTS, INSTITUTIONS AND AGENCIES

Advisory Budget Commission; Transfer of Fund; Authority	41/843
Agriculture, Department of; Non-Applicability of "Handlers Act" to Poultry "Grow-Out Operations"	40/723
Agriculture, Department of; State Farm Census Act; Release of Information Secured By Farm Census	40/724
Appropriations; Authority of General Assembly as to Unexpended Appropriations	41/379

Appropriations; Forfeiture by Violating Condition	41/338
Blind Commission; Recommendation That If Corrected Vision Is 20/40 or If Visual Field Is Abnormal, Patient Be Referred to Eye Physician; Right of Patient to Have Free Choice As to the Services of Optometrist or Ophthalmologist; Constitutional Discrimination on the Part of the State in Favor of One Professional Field As Against Another	40/725
Blind Commission; Voting; Voting Rights of Chairman; Voting By Proxy	40/729
Bureau of Investigation; Public Records; Authority of Clerk of Superior Court to Compel Production of Records	40/730
Burial Commission; Transfer of Records and Administrative Personnel to Dept. of Commerce	41/921
Capital Building Authority; Architects and Engineers; Selection of Architects and Engineers for State Agencies and Institutions	40/732
Capital Building Authority; Department of Administration	41/421
Construction of State Building on State-Owned Property; Municipal Building Permits	40/735
Contracts (See Public Contracts)	
Correction, Department of; Liability for Hospitalization of Inmates	42/38
Correction, Department of; Police Protection	41/582
Correction, Department of; Work Release; Money Retained Subject to Court Order	40/539
Council of State; Real Property Transaction by State Ports Authority Must Be Approved	41/796
Credit Reporting; Application of Fair Credit Reporting Act to State Agencies	41/654
Definition Within Meaning of Proposed Constitutional Mandate to Reduce Number of	40/738

Education Assistance Authority; Maximum Rate of Interest to Be Charged Upon a Student Loan Insured Under the Higher Education Act	40/258
Elections; State Board of; Transfer to Department of Secretary of State	41/543
Eminent Domain; Relocation Assistance	42/104
Environmental Policy Act of 1971; Impact Statement for State Agency Advisory Services	41/871
Equal Employment Opportunities; State and Federal Law Applicable	40/741
Expenses; Payment in Excess of G. S. 138-5 Allowance; Authority of Budget Director	40/742
Expenses Allowable to Administration of Federal Emergency Employment Act of 1971	41/746
Fishing From Bridges; Regulation of	40/65
Funds; Transfer of; Authority for	40/286
Great Seal	41/214
Greater University; Lien on University-Owned Rental Dwelling for Water and Sewer Service Charges	40/743
Greater University; Right to Retain Salary Checks and Apply on Instructor's or Student's Past Due Accounts	40/745
Greater University; Traffic Control	40/746
Higher Education, Board of; Authority Over Granting Degrees By State Institutions	40/746
Highway Commission; Airports; Aircraft Landing Area, Regulation of	41/25
Highway Commission; Contracts; Public Buildings; Work Performed by Highway Commission Forces	41/252
Highway Commission; Department of Archives and History; Appropriation for Purposes of Purchasing Historical Markers	41/241
Highway Commission; Eminent Domain; Acquisition of Right of Way by Highway Commission for Utility Lines	41/366

Highway Commission; Eminent Domain; Relocation Assistance	41/255
Highway Commission; Eminent Domain; Relocation Assistance; Litigation Expense; Purchase of Remnants	41/234
Highway Commission; Highways, Abandonment of; Corps of Engineers	41/343
Highway Commission; Powell Bill Funds	41/307
Housing Corporation; Appropriation; Authority of General Assembly as to Unexpended Appropriation	41/379
Housing Corporation; Appropriation by 1969 General Assembly; Payment to Housing Corporation	41/120
Industrial Commission; Appointment of Members By Governor	40/311
Industrial Commission; Contempt Powers; Deputy Commissioners	41/403
Industrial Commission; Inapplicability of Rules of Civil Procedure; Appointment of Guardian Ad Litem	40/41
Medical Care Commission; Authority of Executive Committee to Approve Hospital Projects	40/747
Medical Care Commission; Authority to Classify Hospital Emergency Services	41/45
Mental Health; Consent for Medical Treatment; Provisions of G. S. 110-20.1 Regarding Exhibition of Certain Children and Television Coverage	41/590
Mental Health; Cost of Care and Treatment of Inmates; Parental Liability	41/507
Mental Health; Costs of Care and Treatment of Inmates; Parental Liability; Eighteen-Year-Olds	41/662
Mental Health; Inapplicability of Fair Labor Standards Act to Patients in State Mental Hospitals	41/153
Mental Health; Liability of Inmate of State Mental Hospital for Cost of Care, Treatment and Maintenance	41/566
Mental Health; Personnel; Title of Business	

Manager as "Hospital Administrator" at Each Institution	41/898
Mental Health; State Hospitals; Authority of Department of Mental Health to Issue Licenses to Hospitals Which it Operates	41/400
Mental Health; Suspended Sentences; Liability of Inmate for Cost of Care and Treatment	41/579
Natural and Economic Resources, Department of; Title VIII - Housing Act of 1964; Community Development Training Program; G. S. 143A-128	41/627
Orthopedic Hospital; Authority to Make Charges for Treatment, Care and Maintenance	42/111
Personnel Board; Applicability of G. S. 143-317 to Hearings of	40/40
Ports Authority; Contractual and Tort Liability; Liability Insurance	41/667
Ports Authority; Council of State; Borrowing of Funds	41/796
Ports Authority; Excess Workmen's Compensation Coverage; Exposure Under the Longshoremen's and Harbor Workers' Compensation Act and the Federal Employees' Liability Act	40/748
Ports Authority; Police Jurisdiction of Special and Local Police	41/433
Ports Authority; Power of the Authority to Lease Authority Property to Private Investors	41/78
Ports Authority; Tort Liability; Liability Insurance	41/497
Private Use by Physicians of State Facilities	42/58
Probation Commission; Taking Fingerprints and Photographs of Adult Probationers	40/184
Property; Closing Public Streets in Butner	41/576
Public Contracts; Competitive Bidding; Conditional Bids	41/394
Public Utilities; Competitive Bids from Motor	

Carriers for Transportation of State Employees' Property at Rates Lower Than Those on File With and Approved by Utilities Commission; G. S. 62-260(a)(1), G. S. 62-144(d) and Chapter 856 of 1971 Session Laws	41/825
Publications; Free Distribution on Request to Statutory List of Institutions; G.S. 147-50	42/94
Purchase and Contract; Authority for State Department of Administration to Purchase Equipment for Local Affairs Department Grants to Local Government	40/751
Purchase and Contract; Necessity of Public Bidding on Contract for Purchase of Computers	41/48
Purchase and Contract; Public Bidding; Authority of Purchase and Contract Division to Purchase or Lease Equipment, or to Enter Into a Service Contract	41/319
Real Property; Zoological Authority; Responsibility of Department of Administration With Respect to Real Property in Which the North Carolina Zoological Authority Has an Interest	41/691
Reorganization; Department of Commerce; Transfer of the N. C. Burial Commissioner & the N. C. Burial Commission to the Department of Commerce by a Type II Transfer; Powers and Duties of the Secretary of Commerce; Articles 1 and 15 of Chapter 143 A of the General Statutes	41/921
Reorganization; Executive Organization Act of 1971; Continuation of Statutory Exemption of Certain State Employees From the State Personnel Act	41/602
Reorganization; No Authority in Department of Human Resources to Make Charges for Hospital Under the Supervision of the Board of Trustees of the N.C. Orthopedic Hospital	42/111

Reorganization; Secretary of State; Transfer of the State Board of Elections by a Type II Transfer to the Department of the Secretary of State; Powers & Duties of Secretary of State; Article 2 of Ch. 143A of the General Statutes	41/543
Secretary of State; Transfer of the State Board of Elections	41/543
State Property, Trusts, State Land Fund; Taxing a Portion of the Proceeds of a Gift of Land for the State Land Fund Where the Deed of Gift Provided for Net Proceeds to be Paid to the Grantors	41/738
Teachers' and State Employees' Retirement System; Investment in Government National Mortgage Association Mortgages Proper	40/752
Tort Liability	40/753
Tort Liability; Authority to Extend Liability By Agreement With the Federal Government	40/755
Tort Liability; Liability in Excess of \$15,000 Per Injury Per Person	40/756
Tort Liability; Mental Health; Area Mental Health Boards; Board Members; Authority to Sue and be Sued	42/120
Tort Liability; N. C. State Ports Authority; Liability Insurance	41/497
Tort Liability; North Carolina State University; Contract for Building of a Pulsar Nuclear Reactor; Agreement to Indemnify and Save Harmless	40/758
UNC at Chapel Hill; Public Utilities; Governor's Commission to Study Sale or Retention of University Owned Utilities; Chapter 723, Session Laws of 1971	41/925 42/122
University of North Carolina, Chapel Hill; Water Supply System; Partial Sale or Lease of	40/761
Water and Air Resources; Authority of Board in Sand Dune Protection	41/874
Water Resources Projects; Authority to Contract for With Secretary of Army	41/522

Western Carolina University; Director of the Budget; Advisory Budget Commission; Authority to Transfer Funds	41/843
Workmen's Compensation; State Not Liable for Workmen's Compensation in Injury of Person on Suspended Sentence	41/398
Zoological Authority; Appropriation; Violation of Condition	41/338
Zoological Authority; N. C. Zoological Garden; Real Property; Placing a Mobile Office Owned by the N. C. Zoological Society, Inc., Upon Property Held in the Name of The North Carolina Zoological Garden	41/711
Zoological Authority; Real Property; Responsibility of Department of Administration With Respect to Real Property in Which the North Carolina Zoological Authority Has an Interest	41/691

STATE EMPLOYEES (See Public Officers & Employees)

STATE HIGHWAY COMMISSION (See Streets and Highways)

STATUTES

Construction of Statute Which Amends Prior Law But Erroneously Cites Section	40/294
---	--------

STATUTES OF LIMITATIONS

Liens; Old Age Assistance; Tolling of Statute	40/700
Lien, Welfare; Additional Statement of Lien	41/185
	41/186

STATUTORY CONSTRUCTION

General and Special Acts; Resolution of Conflict	41/22A
---	--------

STERILIZATION (See Infants & Incompetents;
Sterilization)

STREETS AND HIGHWAYS

Closing Public Alley	40/470
Contracts for Highway Rest Area Structures; Part of Highway Construction	40/541
Contracts Between State Highway Commission and Municipalities for Routine Maintenance by the Municipalities of State Highway System Streets	40/511
Conveyance of City-Owned Property	40/461
Dedication; Offer and Acceptance Thereof	40/513
Expenditure of Municipal Funds on State Highway System Streets	40/515
Expenditure of Powell Bill Funds (See Streets and Highways; Municipalities)	
Greater University; Traffic Control	40/746
Highway Fund; License Plates; Use of Funds From Sale of Personalized License Plates	41/605
Highway Relocation Assistance Act; Mobile Homes; Consideration of Highway Relocation Assistance Payments	40/762
Highway Relocation Assistance Act; Retroactive Payments	40/765
Municipalities; Authority of City to Permit Overhead Tramways to Connect Buildings; Encroachments and Obstruction on Streets By Private Persons	40/520
Municipalities; Enforcement of State Highway Commission Ordinance Within a Municipality	40/514
Municipalities; Powell Bill Funds; Eligibility of Pre-1945 Municipality	41/307
Municipalities; Powell Bill Funds; Expenditure for Drainage Purposes	41/656
Municipalities; Powell Bill Funds; Expenditure for Fire Station Approaches and Sidewalks	41/391
Municipalities; Powell Bill Funds; Expenditure for Sidewalks	42/88
Municipalities; Powell Bill Funds; Expenditure on State Highway System Streets	42/85

Municipalities; Powell Bill Funds; G. S. 136-41 as Amended by Chapter 182, 1971 Session Laws	41/518
Municipalities; Powell Bill Funds; Parking; Marking On-Street Parking Spaces	40/769
Municipalities; Truck Routes	41/156
Municipality Reimbursement for Curbing and Guttering	40/515
Parking; Municipal Permits	40/519
Parking; Penalties; Manner of Enforcement	40/518
Parking; Special Spaces for Police Cars	41/831
Paving of Driveways to Rural Fire District Firehouses; State Highway Commission	41/613
Powell Bill (See Streets and Highways; Municipalities)	
Relocation Assistance; Eminent Domain; State Highway Commission	41/255
State Property; Closing Public Streets in Butner	41/576
Truck Routes (See "Streets & Highways; Municipalities; Truck Routes")	
Turnpike Authority; Toll Roads; Authority of the North Carolina Turnpike Authority to Build a "Toll Road" Proposed By a Developer on Smith Island	40/771

SUMMARY EJECTMENT (See Eviction)

SUPPLEMENTAL TAXES (See Education)

SUPPORT (See Social Services; Support)

SURETIES (See Bonds; Sureties)

T

TAXATION

ABC Act (See Taxation; Intoxicating Liquor)

Ad Valorem; Assessment of Tax on Dog Acquired After January 1	40/73
Ad Valorem; Bank Vault Doors, Vault Ventilators, Safe Deposit Boxes, Night Depositories	41/558
Ad Valorem; Classification; Persons Sixty-Five Years of Age and Older; Principal Place of Residence; G.S. 105-277.1	41/725
Ad Valorem; Collection; Levy on Merchant's Personal Property Transferred Before Payment of Tax; Personal Liability of Purchaser; G.S. 105-366(d)	41/482
Ad Valorem; Collection and Foreclosure of Taxes; Right of Town to Seek Judgment Against Property Owner	40/810
Ad Valorem; Collection of Taxes; Tax Liens; Limitation of Actions; G.S. 105-422	41/431
Ad Valorem; Discovered Property; Under-Valued Property	40/775
Ad Valorem; Duty to List; Penalty for Failure to List	40/777
Ad Valorem; Execution; Description of Property in Execution; G. S. 105-392	41/427
Ad Valorem; Execution Sale; Disposition of Surplus; Proceeds of Execution Sale of Real Property for Payment of Tax Lien Under G. S. 105-392	40/778
Ad Valorem; Exemptions; Air Cleaning Devices	40/781 40/783
Ad Valorem; Exemptions; Automobiles Delivered to County Board of Education for Use in Driver Education Program	40/785
Ad Valorem; Exemptions; Charitable Institutions; Lodge Purposes	40/786
Ad Valorem; Exemptions; Church-Owned Automobile	40/789
Ad Valorem; Exemptions; Church-Owned Real Property; Residence of Director of Missions of the South Yadkin Baptist Association	40/790

Ad Valorem; Exemptions; County-Owned Real Property Leased to Private Concern	40/791
Ad Valorem; Exemptions; Elks Club; Adjacent Land; Swimming Pool; G. S. 105-296(6)	41/248
Ad Valorem; Exemptions; Farm Produce; Original Producer; G. S. 105-297(12)	41/56
Ad Valorem; Exemptions; Leased Tangible Personal Property Owned by Bank; G. S. 105-228.13	41/41
Ad Valorem; Exemptions; Orphanages and Other Similar Homes; Sailors' Snug Harbor; G. S. 105-296(5), (7); G. S. 105-297(5), (7)	41/387
Ad Valorem; Exemptions; Personal Property; Imported Products Stored in Warehouse; Import-Export Clause, Article I, Section 10, Clause 2 of the United States Constitution	41/157
Ad Valorem; Exemptions; Personal Property Stored in Public Warehouses; G. S. 105-281	41/27
Ad Valorem; Exemptions; Private Recreation Club	40/796
Ad Valorem; Exemptions; Property Held for Resale; G. S. 105-296, 105-297	41/328
Ad Valorem; Exemptions; Real and Personal Property of the Charlotte Opera Association, the Charlotte Women's Center and the Carolinas Hospital and Health Services, Inc.; G. S. 105-278; G. S. 105-280	41/748
Ad Valorem; Exemptions; Real Property; Building Owned by Nonprofit Medical Development Authority and Leased to Private Practitioner Doctors; G. S. 105-278; Medical Care Commission Hospital Facilities Finance Act, G. S. 131-140, G. S. 131-158	41/583
Ad Valorem; Exemptions; Real Property; Doctor's Building Owned by Nonprofit Hospital Corporation and Rented to Private Practitioners; G. S. 105-296(10)	41/347

Ad Valorem; Exemptions; Real Property; Privately Owned Parking Lots Leased by Municipality	40/798
Ad Valorem; Exemptions; Real Property Actually Used for Hospital Purposes	40/799
Ad Valorem; Exemptions; Real Property Belonging to Nonprofit Medical Foundation; G. S. 105-278 (Formerly G. S. 105-296 - See Chapter 806, Session Laws of 1971, New Machinery Act)	41/455
Ad Valorem; Exemptions; Real Property Belonging to YMCA	40/802
Ad Valorem; Exemptions; State-Owned Property; Leasehold Interest in State Owned Property	40/803
Ad Valorem; Exemptions; Title and Ownership of Goods in Process of Manufacturing and Contracts Between a North Carolina Corporation and the U. S. Government for Manufacture and Furnishing of Goods to the U. S. Government	40/805
Ad Valorem; Foreclosure; Joint Foreclosure by City-County Tax Collector; G. S. 105-391(j)	41/337
Ad Valorem; Foreclosure; Jurisdiction; Proper Trial Division in Which to Bring Suit	40/808
Ad Valorem; Foreclosure; Right of Town to Seek Judgment Against Property Owner; Collection and Foreclosure of Taxes	40/810
Ad Valorem; Foreclosure; Uniform Civil Process Fees; Jurisdiction	40/811
Ad Valorem; Garnishment; Commissions	40/812
Ad Valorem; Garnishment; Transferee's Liability for Prior Owner's Real Property Taxes	40/813
Ad Valorem; Interest, Waiver of; G. S. 105-355(a)	41/538
Ad Valorem; Liens; Motor Vehicles; Priority of Ad Valorem Taxes Over Prior Perfected Liens and Security Interests	41/692
Ad Valorem; Liens; Personal Property; Real Property	40/814

Ad Valorem; Listing Property; Person in Whose Name Personal Property Should Be Listed; Floor Plan Financing Arrangement; G. S. 105-304	41/42
Ad Valorem; "Necessary Expense"; Local Mental Health Clinic	40/815
Ad Valorem; Payment of; Credit Cards; Drafts	40/817
Ad Valorem; Personal Property; Inventory; G. S. 105-317.1	41/869
Ad Valorem; Personal Property; Listing	40/817
Ad Valorem; Public Service Companies; Broadcast Stations; State Board of Assessment; G. S. 105-333(1)	41/702
Ad Valorem; Real Property; Homes for the Aged, Sick and Infirm; Exemptions; G.S. 105-278(5)	42/99
Ad Valorem; Release of Taxes; Authority of Board of Aldermen	40/819
Ad Valorem; Revaluation; Valuation and Assessment by County Board of Commissioners	40/820
Ad Valorem; Situs; Airplanes; G. S. 105-302(d)	41/324
Ad Valorem; Situs; Cars Used by Executives of Corporation; G. S. 105-304(h)(2)	41/688
Ad Valorem; Situs; Leased Automobiles	40/822
Ad Valorem; Situs; Leased Gas Cylinders	40/823
Ad Valorem; Situs; Personal Property; Property in Custody of Person Other Than Owner; Truck Chassis; G. S. 105-274; -304, -315	41/901
Ad Valorem; Situs; Real Property; Tract Lying in Two Townships Within County; Place for Listing	40/824
Ad Valorem; Situs; Residence; Domicil; Effect of Marriage to Nonresident Serviceman Upon Taxation of Personalty Owned by Woman Who	

Was Legal Resident of County Before Marriage	40/825
Ad Valorem; Situs; Tobacco Curers and Fuel Tanks; G. S. 105-302(d)	41/344
Ad Valorem; State Departments and Agencies; Payment of Taxes Under G. S. 105-279 by Wildlife Resources Commission on Value of Timber Exchanged for Land	41/766
Ad Valorem; Tax Collectors; Appointment of Tax Collectors; Effect of Local Acts; G. S. 105-349 and G. S. 105-395(c)	41/589
Ad Valorem; Taxes Due But Unpaid Upon Dissolution of Corporation	40/827
Ad Valorem; Valuation, Change in; Power of Tax Supervisor After Board of Equalization and Review Adjourns; G.S. 105-325(a)(6); G.S. 105-325(b); G.S. 105-296(i)	41/514
Ad Valorem; Waiver of Interest; G.S. 105-355(a)	41/538
Airports; Passenger Boarding Fee or Tax	40/828 41/877
Ambulance Liens; Garnishment and Attachment; Collection From Without the County; G.S. 44-51.4; G.S. 105-385; G.S. 105-386	41/134
Cigarette Tax; Sales Tax; G.S. 105-113.3, G.S. 105-113.5, G.S. 164.3	41/930
Constitutional Law; Interstate Commerce; Airports; Boarding Fees; G.S. 63-7	41/877
Corporate Income Tax; Dividends; Domestic Corporations	41/884
Corporation Franchise Tax; Exemptions; Air Cleaning Devices	40/781 40/783
Corporation Income Tax; Consolidated Returns; Installment Reporting	40/831
Education Supplemental Tax (See Education)	
Federal; Notice of Tax Levy on Funds Due From the State Department of Social Services to an Individual	40/832
Federal Estate Tax; Group Life Insurance	

Policies; Assignability to Avoid Inclusion in Estate	40/338
Foreclosure Suit; Judgment by Default Final	40/99 40/133
Franchise Taxes; Cablevision Franchise; Impairment of Contractual Obligation; U.S. Constitution, Article I, Section 10	40/833
Franchise Taxes; Indebtedness; Equity Capital; Deductions from Tax Base; G.S. 105-122(b)	41/332
Franchise Taxes; Street Bus Systems; G.S. 105-116; G.S. 105-120.1	41/713
Gasoline Tax; Exemption; Gasoline Purchased by County Board of Education on Behalf of Extension Unit of Community College System for Its Use in Adult Driver Education	40/835
Gasoline Tax; Exemptions; Red Cross	40/836
Gasoline Tax; Refund of Taxes Paid by Counties and Municipalities; Tax Paid on Motor Fuel Used by County-Owned Hospital; G.S. 105-446.1	41/306
Gasoline Tax; Refunds; City Transit Systems; Contiguous Municipalities; G.S. 105-446.3	41/720
Gasoline Tax; Refunds; Redevelopment Commissions; G.S. 105-446.1	41/585
Gift Tax; Decedent's Estate; Assets Includable; G.S. 105-108; G.S. 105-109	42/32
Gift Tax; Gifts to the North Carolina Museum of Art	40/847
Gift Tax; Transfer for Less than Full Consideration; Transfer of Real Property	41/923
Gross Receipts Tax; Franchise Tax; Motor Vehicles; Lease Agreement	40/837
Gross Receipts Tax on Common Carrier Under Lease Agreement	40/437
Hospital Districts; Levy for Operating	

Expenses; Year of Levy; Construction of Ballot; G. S. 131-126.38	41/402
Income Taxes; Divorce; Basis for Gain or Loss; Estates by Entirety; Effect of Divorce; Sale of Interest by Divorced Spouse	40/838
Income Taxes; Exemptions; Dependents; Court Order Assigning Exemptions; G. S. 105-149	41/866
Income Taxes; Exemptions; Government Instrumentalities; Federal National Mortgage Association	41/146
Income Taxes; Exemptions; Nonprofit Educational Institution	40/840
Income Taxes; Exemptions; Religious Order Member Not Exempt From	40/841
Income Tax; Gain from Sale of Property; Mortgage Assumption Agreement; G. S. 105-141(a)(3); Gift Tax; Transfer for Less Than Full Consideration; G. S. 105-189	41/923
Income Taxes; Gross Income; Deductions; Alimony; Separate Maintenance; Periodic Payments; G. S. 105-141.2; G. S. 105-147(21)	41/70
Income Taxes; Gross Income; Exemptions; Annuities	41/137
Income Taxes; Retirement Pay; Taxability of Legislative Retirement Pay and Benefits in Excess of Member's Contributions	41/744
Inheritance Tax; Exemptions; Child	40/842
Inheritance Tax; Exemptions; Grandchildren	40/843
Inheritance Tax; Exemptions, Great-Grandchildren; G. S. 105-4	41/562
Inheritance Tax; Gifts to North Carolina Museum of Art	40/847
Inheritance Tax; Group Life Insurance Policies; Assignability to Avoid Inclusion in Estate	40/338
Inheritance Tax; Safety Deposit Box, Access to; Duty of Clerk of Court	41/44

Inheritance Tax; Tenant by Entireties	40/848
Intangibles Tax; Accounts Payable; Evidences of Debt; Checks; Drafts; G. S. 105-201,202.	41/202
Intangibles Tax; Accounts Receivable; Accounts Payable; Bonuses; G. S. 105-201	41/208
Intangibles Tax; Accounts Receivable; Corporations Reporting Income on Fiscal Year Basis; Dissolved Corporations; Date of Levy	40/848
Intangibles Tax; Accounts Receivable; Periodic Billings by Construction Company; Evidences of Debt; G. S. 105-201 and G. S. 105-202	41/175
Intangibles Tax; Accounts Receivable; Transfers Between Parent and Subsidiary Corporations	40/850
Intangibles Tax; Escheat of Corporate Dividends; Application of Intangibles Tax	40/852
Intangibles Tax; Exemptions; Government Instrumentalities; Federal National Mortgage Association	41/146
Intangibles Tax; Property Held by Fiduciary in This State for Benefit of Nonresident; Ratio Factor for Determining Partial Exemption From Tax	40/853
Intoxicating Liquors; Manufacturer's License; Beer Brewed by Resident Brewer and Shipped Into State for Transshipment to Dealers in this State	40/20
Intoxicating Liquors; Tax on Spirituous Liquors; "Net Profit" Limitation; G.S. 18-85(a); G.S. 18-85.2	41/144
Intoxicating Liquors; Tax on Spirituous Liquors; "Net Profit" Limitation; Law Enforcement Expense; G.S. 18-45(15); G.S. 18-85(a)	41/141
Local Government Sales and Use Tax; Distribution of Proceeds to Municipalities; Pinehurst; G. S. 105-472	41/533
Poll Tax; Exemptions; Disabled Veterans	40/854
Privilege License Tax; Automobiles; Salvage	40/855

Privilege License Tax; Branch or Chain Stores; Montgomery Ward Sales Agency; G. S. 105-98	41/33
Privilege License Tax; Carnivals; License Tax Imposed by County; Exemptions; Uniformity; G. S. 105-39(d); Art. V, N. C. Constitution	41/364
Privilege License Tax; Cigarette Vending Machines	40/856
Privilege License Tax; Cigarette Vending Machines; City and Town Tax on Cigarette Vending Machines	40/858
Privilege License Tax; Cities and Towns; Collection Procedures	40/859
Privilege License Tax; City Ordinance Imposing License Tax on Storage Warehouses	41/487
Privilege License Tax; Cooperative Marketing Associations; Dairies	40/860
Privilege License Tax; Court Reporters; G. S. 160-56	41/104
Privilege License Tax; Day-Care Facilities	41/887
Privilege License Tax; Duplicating Machines and Copiers; G. S. 105-51	41/251
Privilege License Tax; Going Out of Business License Tax; G. S. 160-56	41/429
Privilege License Tax; Itinerant Photographers' License; License Tax By City Where Photographs Taken in City and Negatives Sent Out of State for Development and Return	40/861
Privilege License Tax; Laundry and Dry Cleaning Pick-up Stations; G. S. 105-74 and G. S. 105-85	41/80
Privilege License Tax; Levy on Newly-Annexed Territory	40/863
Privilege License Tax; License Tax Upon Employment Agency; G. S. 105-90	41/82
Privilege License Tax; Out-of-Town Beer Wholesaler Doing Business in Town	40/864
Privilege License Tax; Penalties; Applicability	

of Penalty Imposed Under G. S. 105-236(2) to Failure to Obtain Municipal or County Privilege License	40/866
Privilege License Tax; Pinball Machines; Levy of Tax By Town on Each Machine	40/868
Privilege License Tax; Service Station	40/870
Privilege License Tax; Trailer Sales Lots	40/870
Privilege Licenses; Selling Illuminating Oil or Greases or Benzine, Naptha, Gasoline or Like Products; Automotive Service Stations; G.S. 105-72 and -89	42/18
Real Estate Excise Stamp Tax	40/871
Real Estate Excise Stamp Tax; Cemetery Lots	40/872
Real Estate Excise Stamp Tax; Consideration; Conveyance of Real Property in Exchange for Reciprocal Conveyance of Real Property; G. S. 105-228.29	41/480
Real Estate Excise Stamp Tax; Conveyances by Operation of Law; Commissioners' Deeds; G. S. 105-228.29	41/204
Real Estate Excise Stamp Tax; Conveyances Resulting From Corporate Distribution or Liquidation; Lack of Consideration	41/75
Real Estate Excise Stamp Tax; Exemptions; Foreclosure Deed to Farmers Home Administration; G. S. 105-228.31	41/149
Real Estate Excise Stamp Tax; Exemptions; National Banks	40/872
Real Estate Excise Stamp Tax; Foreclosures; Consideration; G. S. 105-228.29	41/837
Real Estate Excise Stamp Tax; Foreclosures; Government Instrumentalities; Federal National Mortgage Association; Government National Mortgage Association; Veterans Administration; G. S. 105-228.28	41/714
Real Estate Excise Stamp Tax; Foreclosures; Government Instrumentalities; Veterans Administration	41/168

Real Estate Excise Stamp Tax; Husband-Wife Conveyances; Gifts; G.S. 105-228.28, 105-228.29	41/237
Real Estate Excise Stamp Tax; National Banks, Liability of; Public Law 91-156, 91st Congress, H.R. 7491	40/873
Real Estate Excise Stamp Tax; Partition Deeds Exchanged Between Tenants-in-Common	40/875
Real Estate Excise Stamp Tax; Refusal of Register of Deeds to Accept Deed for Recording Pending Payment of Tax & Purchase of Stamps	40/876
Real Estate Excise Stamp Tax; Voluntary Partitions of Realty; Exchanges of Realty; G.S. 105-228.28, G.S. 105-228.29, G.S. 105-228.30 and 1971 Treasurer Regulation § 47-4361-2(b)(7)	41/639
Refund of Taxes; Statute of Limitations; G.S. 105-266 and G.S. 105-155	41/509
Sales Tax, County; Application to Sales Within the County of Tangible Personal Property	40/879
Sales Tax, County; Situs of Sale; G.S. 105-164.51	40/881
Sales Tax, County; Use for Non-Necessary Expense Prohibited	40/883
Sales Tax, State; Cigarette Tax, Includable in Base for Sales Tax Purposes	41/930
Sales Tax, State; Exemptions; Crushed Stone; Sand; G.S. 105-164.13(3)	41/511
Sales Tax, State; Exemptions; Refunds	40/886
Sales Tax, State; Laundries and Dry Cleaners; Rug Cleaning Services; G.S. 105-164.4(4)	42/35
Sales Tax, State; Liability for Payment of N. C. Use Tax on Motor Vehicles and Other Tangible Personal	

	Property Purchased Outside N.C. for Use in This State by Nonresident Servicemen Stationed in N.C.; Soldiers' and Sailors' Civil Relief Act	40/887
Sales	Tax, State; National Banks Liability for; Public Law 91-156, 91st Congress, H.R. 7491	40/890
Sales	Tax, State; Public Sale of Automobile by County Board of Education; Tax Liability of Purchaser at Sale	40/892

TEACHERS (See Education)

TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM (See Retirement or State Departments, Institutions and Agencies)

TECHNICAL INSTITUTES (See Education)

TELEVISION (See Municipalities; Franchises)

TIME

	Drivers' Licenses; Suspensions; Time Suspension Begins	40/428
	Eastern Standard; Intoxicating Liquors; Hours of Sale and Consumption	40/7

TOLL ROADS

	North Carolina Turnpike Authority; Authority of the Turnpike Authority to Build a "Toll Road" Proposed by Developer on Smith Island	40/771
--	--	--------

TORTS

	Municipalities; Authority to Act Based on Unauthorized Representations by Individual Board Members	40/522
	Municipalities; Recreation Commission	40/505
	Prisoners; Liability for Injury to Persons in Custody of Department of Corrections for Safekeeping	40/537

State Departments, Institutions and Agencies; Liability	40/753
State Departments, Institutions and Agencies; Liability; Liability Insurance	40/755
State Departments, Institutions and Agencies; Ports Authority; Contracts for Tort Liability; Liability Insurance	41/497
Teacher Aides; Liability of	41/667
Tort Claims Act; Liability in Excess of \$15,000 Per Injury Per Person	40/758
	40/756

TRAILERS

Sales; Privilege License Required for	40/870
---------------------------------------	--------

TRUSTS

Accounting; Effect Given Exemption in Will as to Filing Periodic Accounts; Compelling Accounting	41/757
Charitable Trusts; Termination of "Private Foundation" and Distribution of Assets	41/828
Revocation by Trustor	40/893

TUITION (See Education)

TURNPIKE AUTHORITY

Toll Roads; Authority of the North Carolina Turnpike Authority to Build a "Toll Road" Proposed by Developer on Smith Island	40/771
---	--------

U

UNIFORM COMMERCIAL CODE

Motor Vehicles; Title and Registration; Perfection of Security Interests	40/446
--	--------

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

Style of Case Showing the Mother As Complainant,

the Dependent Children Being Identified in
the Body of Document Filed with the Courts;
Order of Support 40/718

UNIVERSITY OF NORTH CAROLINA (See State Department,
Institutions & Agencies; Greater University or
Education)

UTILITIES

University Owned Utilities; Governor's
Study Commission to Study Sale or 41/925
Retention of 42/122

V

VENDING MACHINES

Privilege License Tax; Cigarettes 40/856
Privilege License Tax; City and Town Tax on
Cigarette Vending Machines 40/858

VENUE

Criminal Trial for Violation of G. S. 14-402;
Weapons; Pistol Permits to be Obtained in
County Where Gun Purchased or Transfer
Made; Venue of Criminal Trial For
Violation of G. S. 14-402 40/195

VETERANS

Motor Vehicles; Free Registration
Plates 40/439
Poll Tax; Exemption of Disabled
Veterans 40/854
Public Records; Receipt of Free Copies 40/636

W

WAGES

Garnishment; Exemption of State From Federal
Law 40/531

Minimum Wage Act; Part Time Employees to be Counted Under G. S. 95-87	41/438
--	--------

WARRANTS (See Criminal Law & Procedure)

WATER RESOURCES

Contracting Debt for; Authority of	41/522
State and Local Government	41/883

WATERSHED IMPROVEMENT DISTRICTS

Exchange of Land of District for Privately Owned Land; G. S. 139-8(4).	41/228
---	--------

WEAPONS

Concealed; What Is; G. S. 14-269	41/207
Disposition of Personal Property Seized by Police	40/143
Educational Property; Applicability of G. S. 14-269.2 to Forest Lands Owned or Controlled by Universities	41/539
Firearms; Federal Firearms Act of 1968; Criminal Justice Planning Units; Exempt Transfers; 18 USCA 925 and 26 USCA 5853	41/568
Issuance of Pistol Permits	40/194
Pistol Permits to be Obtained in County Where Gun Purchased or Transfer Made; Venue of Criminal Trial for Violation of G. S. 14-402	40/195
Pistol Permits to 18, 19 and 20-Year-Olds	41/465
Possession of Weapons by Faculty Members of Schools in Homes of Faculty Members Located on School Property	41/466

WILLS (See Administration of Estates; Wills)

WITNESSES

Criminal Law & Procedure; Grand Jury; Authority of Grand Jury to Summons Witnesses	40/175
--	--------

WORK INCENTIVE PROGRAM (See Social Services; Work
Incentive Program)

WORKMEN'S COMPENSATION

ABC Officers; Coverage When Assisting in Riot	40/552
Law Enforcement Officers; Those Assigned Outside Their Jurisdiction	42/76
Medical Bills Incurred in Another State	40/894
Policemen; Injury While Moonlighting	41/911
Policemen; Workmen's Compensation for Injury Outside Corporate Limits; Chasing Speeding Motorist Outside Corporate Limits	40/181
Receiving Wages and Temporary Total Disability Payments Under the Workmen's Compensation Act at the Same Time	40/634
School Employees; Reservation of Sick Leave of Employee Until Workmen's Compensation Benefits Have Been Exhausted	40/290
State Employees; Compensation for Injury While Traveling in Private Plane	41/464
State Highway Patrol	42/136
State Not Liable for Workmen's Compensation in Injury of Person on Suspended Sentence	41/398

Z

ZONING

Elections; No Authority for Commissioners to Hold a "Straw Vote" Election	40/95
--	-------



NORTH CAROLINA
ATTORNEY GENERAL REPORTS

VOLUME 42
NUMBER 2

ROBERT MORGAN
ATTORNEY GENERAL

NORTH CAROLINA
ATTORNEY GENERAL
REPORTS

Opinions of the Attorney General
January 1, 1973, through June 30, 1973

MAILING ADDRESS:
P. O. Box 629, Raleigh, N. C. 27602

ROBERT MORGAN
Attorney General

Harry W. McGalliard
Chief Deputy Attorney General

Ralph Moody
Special Counsel

Jean A. Benoy	Andrew A. Vanore, Jr.
James F. Bullock	Robert Bruce White, Jr.
Deputy Attorneys General	

Carroll Leggett
Special Assistant Attorney General

H. H. Weaver
Administrative Deputy Attorney General

Myron C. Banks
James L. Blackburn
William F. Briley
Lester Chalmers
H. Al Cole, Jr.
Richard B. Conely
T. Buie Costen
Donald A. Davis
Christine Y. Denson
Raymond W. Dew, Jr.
Sidney S. Eagles, Jr.
Edward L. Eatman, Jr.
Roy Andre Giles, Jr.
Eugene Hafer
Guy A. Hamlin
Claude Harris
Charles M. Hensey
Parks H. Icenhour
Dale P. Johnson
Rafford E. Jones

Thomas E. Kane
I. Beverly Lake, Jr.
Richard N. League
Charles A. Lloyd
James E. Magner, Jr.
William W. Melvin
William F. O'Connell
William B. Ray
Millard R. Rich, Jr.
James B. Richmond
Walter E. Ricks, III
Henry Thomas Rosser
Jacob L. Safron
Alfred N. Salley
Howard P. Satisfsky
Eugene A. Smith
Robert S. Weathers
Robert G. Webb
Thomas B. Wood

Assistant Attorneys General

Wade E. Brown, Consultant
Herbert Lamson, Jr., Claims Attorney
Russell G. Walker, Jr., Revisor of Statutes

Ruth G. Bell
George W. Boylan
Jones P. Byrd
Ralf Haskell
Charles R. Hassell, Jr.
C. Diederich Heidgerd
Howard A. Kramer
Edwin Thomas Maddox, Jr.

Henry E. Poole
M. Ann Reed
Robert R. Reilly, Jr.
Russell G. Sherrill, III
John M. Silverstein
Norman L. Sloan
Edwin M. Speas, Jr.
Emerson D. Wall

Associate Attorneys

3 January 1973

Subject: State Departments, Institutions and Agencies; Publications; Free Distribution on Request to Statutory List of Institutions; G. S. 147-50

Requested by: Honorable Sam Ragan
Secretary
Department of Art, Culture and History

Question: Whether various pamphlets, documentary volumes, facsimile reproductions of maps, and professional historical journals published by the State Department of Archives and History are exempt from the requirement that copies be furnished on request at no cost to certain institutions as prescribed by G. S. 147-50.

Conclusion: No, various pamphlets, documentary volumes, facsimile reproductions of maps, and professional historical journals published by the State Department of Archives and History are not exempt from the requirement that copies be furnished on request at no cost to certain institutions as prescribed by G. S. 147-50.

The 11 October 1972 opinion of the Attorney General to Mr. James Thompson, Director of the Walter Clinton Judson Library at the University of North Carolina at Greensboro, is expressly reaffirmed. (42 N.C.A.G. 94).

The statute in question, G.S. 147-50, is set out verbatim:

"§147-50. *Publications of State officials and department heads furnished to certain institutions, agencies, etc.*—Every State official and every head of

a State department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
University of North Carolina at Charlotte	2 copies;
University of North Carolina at Greensboro	2 copies;
North Carolina State University at Raleigh	2 copies;
East Carolina University at Greenville	2 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina Central University	5 copies;
Library of Congress	2 copies;
State Library	5 copies;
Western Carolina University	2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University."

The statute is clear and unambiguous in its mandate to those State agencies who issue publications that they " . . . *shall*, on request, furnish . . . " to the enumerated institutions the numbers specified of " . . . reports, bulletins, maps or other publication . . . " (*Emphasis added.*)

The statutory language "shall" is clearly mandatory in this case. The term "furnish" in this context does not contemplate the sale of the publications even at a preferred rate.

Any possible ambiguity about the mandatory nature of the

requirement that the publications be furnished to the listed institutions in the number listed on request is dispelled when one notes that their obligation to furnish copies to others than the listed institutions is subject to the "discretion of the issuing official" and subject to the supply available. No such discretionary power is given the issuing authority with respect to the obligation to furnish publications to the listed institutions on request. The statutory language describing the material to be furnished, " . . . any printed report, bulletin, map or other publication . . . ", could not be more broad and all encompassing.

Careful reading of G.S. 147-50 and G.S. 121-2, cited by the Department, discloses no rational basis for an exemption for the pamphlets, documentary volumes, maps and professional historical journals published by the Department of Archives and History.

Granted, there may be some fiscal hardship involved for the issuing agency in having to furnish 78 free copies of its report. On the other hand, the General Assembly clearly weighed the relative hardships--those on the issuing agency to furnish the free copies as opposed to the hardship on the libraries of the State who might otherwise be compelled to allocate their limited resources so as to preclude a ready reference to State documents and publications in their institutions' libraries. The General Assembly opted in favor of wide distribution of State financed publications by free distribution to the institutions listed in G.S. 147-50.

If a State agency issuing publications desires to be exempt from this requirement as to one or all of its publications, it should seek from the General Assembly an express exclusion for all or certain of its " . . . reports, bulletins, maps, and other publications . . . " from the purview of G.S. 147-50.

Robert Morgan, Attorney General
Sidney S. Eagles, Jr.,
Assistant Attorney General

- - -

3 January 1973

Subject: State Departments, Institutions and Agencies; Art Museum; Building Commission; Selection of Site for State Art Museum

Requested by: Mr. Thomas White, Chairman
Advisory Budget Commission

Question: Do the provisions of Section 12, Chapter 755, Session Laws of 1969 and Section 11, Chapter 693, Session Laws of 1971 require the approval of the Advisory Budget Commission in the site selection process of the State Art Museum Building Commission?

Conclusion: No. The State Art Museum Building Commission was created by Chapter 1142, Session Laws of 1967. Section 2 sets the powers of the Commission. The first power granted is "With the approval of the Governor and Council of State and the North Carolina State Capital Planning Commission, *to determine the site for the building of the State Art Museum.*" (Originally, this section specified that the site was to be "on land which has been denominated as Heritage Square". This limitation was repealed by Chapter 545, Session Laws of 1969.)

Chapters 755, Session Laws of 1969 and 693, Session Laws of 1971 are the Capital Improvement Appropriations acts of their respective years. Sections 12 and 11 respectively deal with the appropriation of funds for the ". . . design, construction, furnishing and all related costs in constructing, equipping and furnishing an Art Museum Building and acquiring a site therefor. . .".

The use of the appropriated funds is made ". . . subject to the

approval of the Governor and the Advisory Budget Commission.". This in no way detracts from the power of the State Art Museum Building Commission to "determine the site for the building of the State Art Museum" with approval of the Governor and Council of State and the North Carolina State Capital Planning Commission. Hence, no approval of the Advisory Budget Commission is required in the site selection and determination process.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

9 January 1973

Subject: Juries - Jurors; G.S. 9-5

Requested by: The Honorable J. Phil Carlton
Chief District Judge
Seventh Judicial District

Question: If jurors are summoned for a session of superior court and the session is subsequently cancelled prior to its beginning, may the chief district judge order that the jurors serve for a later session of superior court?

Conclusion: No.

The language contained in G.S. 9-5 precludes the use of such jurors for later sessions of court.

Jurors were summoned for a particular session of superior court. Prior to the commencement of the session, the court was cancelled. Rather than summoning other jurors for a session of superior court which would begin two weeks after the cancelled session, it was hoped that the jurors already summoned could be used for the subsequent session.

G.S. 9-5 provides the procedure for drawing a panel of jurors and contains language concerning their service as follows:

"The persons so summoned may serve as jurors in either the superior or the district court, or both, *for the week for which summoned*. Jurors who serve each week shall be discharged at the close of the weekly session or sessions, unless actually engaged in the trial of a case, and then they shall not be discharged until their service in that case is completed." (*Emphasis added.*)

It appears that the intent of this statute is that jurors will serve only at the session of court for which they are summoned unless at the end of the session they are actually engaged in a trial, in which case they will continue to serve until the trial is completed.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

9 January 1973

Subject: Education; Teachers; Teacher Tenure Act;
G.S. 115-142; Career Teachers

Requested by: Mr. Robert E. Poindexter
Director of Personnel
Burlington City Schools

Questions: (1) Can a teacher who has contracted to work only one-half of each school day become a career teacher?

(2) If a teacher has been employed since the 1970-71 school year, must he serve a probationary period of three years beginning in the fall of 1972 before being eligible for career teacher status?

(3) Is a teacher entitled to credit toward tenure for teaching experience gained while that teacher did not have an A certificate?

(4) Can a local school board rehire a teacher qualified for career teacher status for a fourth consecutive year and, at the same time, keep the teacher a probationary teacher and deny him career teacher status?

Conclusions:

(1) Yes. A teacher who is employed under contract to serve one-half day each school day is "regularly employed" within the meaning of the Act.

(2) Yes. Unless a teacher has four years' experience with a particular school system or has five years' experience statewide as of the effective date of the Act, the teacher is entitled to no credit toward career teacher status.

(3) No. Teaching experience gained while a teacher holds less than an A certificate does not count toward the experience required for tenure.

(4) No. If a school board rehires a teacher for a fourth consecutive year and if the teacher is otherwise eligible for career teacher status, the rights of a career teacher automatically vest in him upon being rehired for the fourth consecutive year.

(1) The first question presented is whether or not teachers, otherwise eligible for career teacher status, who contract work for less than the full day of each school day can obtain career teacher status. The facts are these: The Burlington City School System has had a contract with a certain librarian since the fall of 1968. Under the terms of the contract, the librarian works one-half day each school day. The librarian has an A certificate, and the contract has been renewed each year since 1968.

The relevant statutory provision may be found in G.S. 115-142(a)(3) which reads as follows:

"'Career teacher' means any teacher who has been *regularly employed* by a public school system for a period of not less than three successive years and who has been reemployed by a majority vote of the board of such public school system for the next succeeding year." (*Emphasis added.*)

Since the librarian in question will otherwise be eligible for career teacher status (she has an A certificate and four years' experience prior to July 1, 1972, as required by the provisions of G.S. 115-142(c)), the real issue in the present inquiry is whether or not her employment, under contract, for one-half a day each school day amounts to her being "regularly employed" as that term is used in the portion of the statute quoted above.

There are no North Carolina cases construing the Tenure Act, and there do not appear to be any judicial constructions reported in this State of the phrase "regular employment". However, other courts have dealt with the phrase as it pertains to various other tenure acts.

One of the leading cases is *McSherry v. St. Paul*, 202 Minn. 102, 277 N.W. 541, 127 ALR 1302 (1938). There the Minnesota Supreme Court was dealing with the question of whether or not a substitute teacher was "regularly employed" under the Minnesota tenure statute and, as a result, eligible for tenure. Specific questions involving tenure eligibility for substitute teachers would not appear to be applicable to our statute; however, the Minnesota court's comments concerning the meaning of regular employment are germane.

The court found that "when there is continuing engagement to serve the employer in his business at such times as the particular and essential service may be needed, the employment is not 'casual' according to any of the judicial definitions of that term," and that "whether the employment is regular depends upon the nature of the service rendered by the employee and not upon the duration or frequency of his employment." 277 N.W. at 545, citations

omitted. The court went on to hold that since the teacher in the case before it could take no other job and that since her services were used with substantial continuity, she was regularly employed. Clearly, there is greater continuity in the service of the librarian in the present inquiry than there was even in *McSherry*.

Sherrod v. Lawrenceburg, 213 Ind. 392, 12 N.E. 2d 944 (1938), is perhaps more in point. There the Indiana Supreme Court held that a teacher who taught school twelve days a month at a fixed compensation every month was not merely a part-time teacher and was eligible for tenure. Her employment was not intermittent, but regular, and the court found that the tenure law did not require her to teach every day or every hour of every day. Here, it would appear that since the librarian is continuously employed, and since her employment is not intermittent, it is regular. Therefore, she is eligible for career teacher status.

(2) The second question is whether a teacher who has been employed since the beginning of the 1970-71 school year must serve a three-year probationary period beginning in the fall of 1972 in order to be eligible for career teacher status. Since the teacher did not have four years' employment with the Burlington City Schools prior to July 1, 1972, the teacher is entitled to no credit for employment prior to July 1, 1972, and must serve an entire three-year probationary period, beginning in the fall of 1972, before being eligible for tenure. Unless a teacher has either four years' experience with a particular system or five years' experience statewide prior to the effective date of the Act, he is entitled to no credit for employment prior to July 1, 1972, in determining career teacher status under the provisions of G.S. 115-142(c) as interpreted in a previous opinion letter of this office dated September 5, 1972, and addressed to Mr. W. F. Womble (42 N.C.A.G. 61). A copy of that letter is enclosed herewith.

(3) The third question presented again involves employment toward tenure. The question is whether or not experience gained by a teacher holding less than an A certificate may be counted toward tenure status. This office concludes that such experience does not count toward career teacher status.

Two definitions contained within the Act are pertinent. A career

teacher is defined in G.S. 115-142(a)(3) as "any teacher who has been regularly employed by a public school system for a period of not less than three successive years and who has been reemployed . . . for the next succeeding school year." As used in the Act, a teacher is "any person who holds at least a 'class A certificate'" G.S. 115-142(a)(9).

By defining a teacher as one who holds an A certificate, the Act itself tends to indicate that the required experience must be gained while holding an A certificate. More important, however, is the probationary scheme of the Act.

When a local school board hires a teacher with an A certificate, it knows that it has as a rule three years in which to decide whether or not that teacher should be retained. If it reemploys the teacher for a fourth consecutive year, the teacher automatically acquires tenure. The three-year probationary period is designed to give the school board an opportunity to employ the teacher on a trial basis and determine whether he should be retained on a tenured basis. The Tenure Act gives the board notice and warning that if it reemploys a teacher holding at least an A certificate for a fourth consecutive year, that teacher will have acquired tenure with the board.

The board is put on no such notice when it employs a teacher holding less than an A certificate. A teacher with less than an A certificate simply cannot attain tenure status. However, if experience acquired by one not holding an A certificate were to count toward that required for tenure, then a teacher with such experience could conceivably automatically vest himself with tenure rights by acquiring an A certificate. To allow a teacher not previously eligible for tenure to automatically vest himself with career teacher status would pervert the statutory probationary period designed to put school boards on notice that their actions may result in tenure.

(4) The fourth question in this inquiry addresses itself to whether or not a local school board may reemploy an otherwise eligible teacher for the fourth consecutive year without granting him tenure. Clearly it may not. Tenure is acquired through operation of law and cannot be withheld at the discretion of the school board.

The pertinent statutory provision may be found in G.S. 115-142(c):

"After a teacher has been employed by the same public school system in this State for a period of three consecutive years, the board of that system is required to vote upon that teacher's employment for the next succeeding year. If a majority of the board votes to reemploy the teacher, he or she becomes a career teacher. If a majority of the board votes against reemployment of the teacher, the teacher remains a probationary teacher whose rights are set forth in G.S. 115-142(m)(2). If the board fails to vote, but reemploys the teacher for the next successive year, then the teacher automatically becomes a career teacher."

The last sentence quoted above makes it clear that tenure automatically follows reemployment. The confusion prompting the present inquiry results from the second and third sentences quoted above.

The second sentence provides that tenure follows a vote of the board to reemploy a teacher for a fourth consecutive year. In the third sentence, it is stated that a teacher remains a probationary teacher if the board votes against reemployment. The problems seen by the present question is how a board of education could vote against reemploying a teacher and that teacher still be retained as a probationary teacher.

The solution to the problem is apparent when it is realized that the Act at least anticipates to some extent that the vote on reemployment will occur at some time during the teacher's third year of employment. If the vote does occur at that time, and if the vote is against reemployment, it is clear that what the Act means is that the teacher will retain his probationary rights during the third year and not be reemployed for the fourth year. It is also apparent from the Act that if the board votes in favor of reemployment, the teacher to be reemployed is automatically vested with career teacher status at the time that the board votes.

Robert Morgan, Attorney General
Andrew A. Vanore, Jr.,
Deputy Attorney General

- - -

12 January 1973

Subject: Courts; Judges; District Court;
Constitutionality of Imposing Certain Fines

Requested by: Honorable John A. Johnson
Clerk of Superior Court
Duplin County

Question: Is the granting by a district court judge of
prayer for judgment continued,
conditioned upon payment of a specified
amount to certain benevolent
organizations, constitutional?

Conclusion: No.

Article IX, Section 7 of the North Carolina Constitution, reads as follows:

"Sec. 7. *County school fund.* All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools."

G.S. 115-98, based on Article IX, Section 7 of the Constitution of North Carolina, reads as follows:

"§ 115-98. *Fines, forfeitures and penalties.* It shall be the duty of every public officer, including clerks

of the several courts and all magistrates, as well as all others in any way related or connected with the assessing, collecting and handling of any of those funds mentioned in the Constitution, Article IX, § 7, which shall belong to and remain in the several counties and which shall be faithfully appropriated for establishing and maintaining the free public schools:

(1) To keep in a proper record book supplied by the county an itemized, detailed statement of the respective amounts received by him in the way of fines, penalties, amercements and forfeitures.

(2) To account for and pay to the county treasurer all of said funds received by him within 30 days after the receipt thereof, to the end that all of said funds may be faithfully appropriated by the county board of education for the purposes mentioned in the Constitution.

(3) To enter immediately upon the docket or record book all of said funds which are assessed, and which shall not be remitted except for good and sufficient reasons, which reasons shall be stated on the docket and at all times be open to public inspection.

(4) Any officer, including magistrates, violating any of the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment at the discretion of the court."

The granting of a prayer for judgment continued, conditioned upon the payment of a certain sum to the Firemen's Association, County

Law Enforcement Association, or County Association for Mentally Retarded Children, notwithstanding the undoubted worthiness of such organizations, is unconstitutional in light of the two provisions set out above.

Such payments are clearly in the nature of fines, penalties, or forfeitures collected for a breach of the penal laws of the State. As such, Article IX, Sec. 7 of the Constitution, requires that these moneys shall be used exclusively for maintaining free public schools and G.S. 115-98 sets out the procedure to be followed in accomplishing this purpose.

Robert Morgan, Attorney General
Russell G. Sherrill, III,
Associate Attorney

- - -

12 January 1973

Subject:	Municipalities; Ocean; Regulating Activities in the Atlantic Ocean by
Requested by:	Mr. Herbert E. Dugroo Nags Head Town Manager
Question:	Does the Town of Nags Head have authority to regulate by ordinance the activity of surfers in the Atlantic Ocean?
Conclusion:	No. The Corporate Limits of the Town of Nags Head end at the high water mark of the Atlantic Ocean and unless there is specific statutory authority to the contrary, the Town's ordinance making authority power does not extend beyond its corporate limits.

The charter of the Town of Nags Head (Chapter 808, s. 2, 1961 Session Laws of North Carolina) sets out its boundaries and

corporate limits. The town is bounded generally " . . . on the east by the Atlantic Ocean . . .", and more specifically the boundary runs " . . .thence from the beginning point in a general southeasterly direction along the Atlantic Ocean following the various courses and meanderings thereof," It is apparent from the above described boundaries that the eastern boundary of the Town of Nags Head, nothing else appearing, is at the high water mark of the Atlantic Ocean since North Carolina is a "high tide" State. *Fishing Pier, Inc. v. Town of Carolina Beach*, 277 N.C. 297, 177 S.E. 2d 513 (1970).

The General Assembly of North Carolina may authorize a city or town to enact an ordinance having effect outside its boundaries; however, in the absence of the grant of such powers, the corporation "may not, by its ordinance, prohibit acts outside its territorial limits or impose criminal liability therefor." *State v. Furio*, 267 N.C. 353, 356, 148 S.E. 2d 275 (1966).

Therefore, since the corporate limits of the Town of Nags Head stop at the high water mark and no statute has been discovered which extends the authority of the Town over surfers beyond its territorial limits, we are of the opinion that the Town of Nags Head may not regulate by ordinance the activity of surfers in the Atlantic Ocean.

Robert Morgan, Attorney General
Thomas E. Kane, Ocean Law
Consultant
Assistant Attorney General

- - -

12 January 1973

Subject: Public Contracts; Bidding; Buildings,
Vocational Training Classes.

Requested by: Mr. Philip P. Godwin
Gates County Board of Education
Attorney

Question: May the County Board of Education, without violating the competitive bidding requirements of G.S. 143-129, use vocational building trade classes to construct a school bus garage?

Conclusion: Yes. G.S. 115-240 authorizes boards of education to acquire building sites and to purchase all materials needed for the construction of buildings by vocational building trade classes, provided that the *cost of materials* for any one project shall not exceed twenty thousand dollars (\$20,000.00).

Robert Morgan, Attorney General
Eugene A. Smith,
Assistant Attorney General

- - -

17 January 1973

Subject: General Assembly; Annual Sessions;
Annual Budgets; Constitutional Provisions

Requested by: Mr. Clyde L. Ball
Legislative Services Officer
North Carolina General Assembly

Question: Are there existing Constitutional or statutory impediments to the adoption of an annual budget in lieu of the present biennial budget for State government?

Conclusion: There are no Constitutional impediments to adoption of an annual budget in lieu of the present biennial budget for State government. Numerous amendments to Article 1 of Chapter 143 of the General

Statutes, the Executive Budget Act, and possibly other statutes, are necessary.

The Constitutional references applicable are Article II, Sections 11 and 20, which provide:

"Sec. 11. *Sessions.*

(1) *Regular Sessions.* The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) *Extra sessions on legislative call.* The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives."

"Sec. 20. *Powers of the General Assembly.* Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days."

If these sections are not amended, then a session of the General Assembly would run for two years and would still be referred to as the 1973 Session, etc. There is no Constitutional impediment to the device of an Adjourned Session, as used by the 1971 General Assembly, with the Adjourned Session falling in the second year of the 1973 Session and there would be no Constitutional impediment to the Regular Session and the Adjourned Session

respectively adopting annual budgets. Of course, no Adjourned Session could run beyond election day in November of the even-numbered years since the members of the General Assembly would be newly elected at that time.

Also, we call your attention to the Constitutional provision in Article V, Section 3(1), effective until July 1, 1973, and Article V, Section 3(1)(f), effective after July 1, 1973. This places a biennial yardstick on the incurring of indebtedness by the General Assembly, but is not an impediment to annual budgets and would remain a biennial yardstick.

As indicated in your inquiry, there are numerous statutory amendments to the Executive Budget Act which would need to be made in order for the Advisory Budget Commission to have the authority to prepare an annual budget and in order for the General Assembly to adopt an annual budget. In addition, we would recommend a catch-all change since there probably are numerous session laws, not codified in the Executive Budget Act, which refer to the biennial budget.

Matters relating to the whole biennial concept of operation of State government are so interwoven in a number of statutes that drafting legislation to accomplish the changes would require considerable study and research.

Robert Morgan, Attorney General
Harry W. McGalliard,
Chief Deputy Attorney General
Christine Y. Denson,
Assistant Attorney General

- - -

19 January 1973

Subject: Administration of Estates; Administrators;
Person Under 21 May Not Serve.

Requested by: The Honorable Frankie C. Williams

Clerk of Superior Court
Rockingham County

Question: May a person under 21 years of age serve
as an administrator of an estate?

Conclusion: No.

In view of changes made in the laws of this State by the 1971 General Assembly respecting minors, a question has arisen as to whether a person 18, 19 or 20 years old may serve as an administrator of an estate. Chapter 585 of the 1971 Session Laws provided "The common law definition of minor insofar as it pertains to age of the minor is hereby repealed and abrogated" and also provided "A minor is any person who has not reached the age of 18 years."

G.S. 28-8 provides, in part, "The clerk shall not issue letters of administration or letters testamentary to any person who, at the time of appearing to qualify - (1) Is under the age of twenty-one years." Chapter 1231 of the 1971 Session Laws amended many statutes relating to minors by striking the word or number "21" and substituting in lieu thereof the word or number "18". However, G.S. 28-8 was not amended by Chapter 1231. Therefore it is our opinion that G.S. 28-8 is in full force and effect and requires that an administrator be at least 21 years of age.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

19 January 1973

Subject: Courts; Clerk of Superior Court; Assistant
Clerk; Authority to Open Safety Deposit
Box

Requested by: The Honorable Charles M. Johnson

Montgomery County Clerk Superior Court

Question:

May anyone, other than a clerk of superior court, be present as a representative of the clerk, under the provisions of G.S. 105-24, when a lockbox or safety deposit box located in a trust company or a bank belonging to a deceased person is opened?

Conclusion:

An assistant clerk of superior court has authority to represent the clerk of superior court when a safety deposit box or a lockbox is opened pursuant to the provisions of G.S. 105-24.

G.S. 105-24 provides that every bank, trust company, etc., engaged in the business of renting lockboxes for the safekeeping of valuable papers and personal effects " . . . upon the death of any person using or having access to such lock box, as a condition precedent to the opening of such lock box by the executor, administrator, personal representative, lessee or cotenant of such deceased person, require the presence of the clerk of the superior court of the county in which such lock box is located. It shall be the duty of the clerk of the superior court, or his representative, in the presence of an officer or representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of any such lock box and to furnish a copy of such inventory to the Commissioner of Revenue, to the executor, administrator,"

G.S. 7A-102(b) provides in part: "An assistant clerk is authorized to perform all the duties and functions of the office of clerk of superior court, and any act of an assistant clerk is entitled to the same faith and credit as that of the clerk."

It thus seems clear that even though the first sentence from G.S. 105-24 quoted above does not specifically mention an assistant clerk of superior court, that the next succeeding sentence in G.S. 105-24 quoted above and G. S. 7A-102(b) clearly indicate that an assistant clerk has full authority to represent the clerk when a lockbox is opened and also to inventory its contents.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

22 January 1973

Subject: Counties; Sand Dune Protection; Permits;
Appeal Procedure.

Requested by: Mr. L. Patten Mason
Carteret County Attorney

Question: Does G.S. 104B-10 permit the board of county commissioners by ordinance to establish an intermediary appeal body to review decisions of the shoreline protection officer relating to sand dune alteration permits prior to review by the board of county commissioners?

Conclusion: No. The action of the shoreline protection officer in granting or denying a permit under Article 3, Chapter 104B of the General Statutes is appealable directly to the board of county commissioners as a matter of law.

Article 3, Chapter 104B of the General Statutes sets forth the procedures for the issuance or denial of permits to alter sand dunes or vegetation thereon along the Outer Banks of North Carolina. The shoreline protection officer appointed pursuant to the statute is empowered to grant a permit after finding as a fact that the proposed activity will not materially weaken the dune or reduce its effectiveness as a protective barrier. If he finds the opposite to be true, he must deny the permit.

Either decision of the shoreline protection officer is appealable under the statute. G.S. 104B-10 sets out the appeal procedure. For the

purpose of this inquiry the applicable portion of that section is subsection (a), which states:

"(a) In the event that a shoreline protection officer denies a permit under this Article, the applicant may within 30 days file an appeal with the board of county commissioners. In the event that a shoreline protection officer grants a permit under this Article, any property owner whose property may be damaged by action taken under the permit or any interested State agency may within 30 days file an appeal with the board of county commissioners"

It is our opinion that the procedure quoted above is not discretionary nor subject to variance by the board of county commissioners. Rather, the statute is explicit and establishes as a matter of right a direct appeal to the board of county commissioners from the decision of the shoreline protection officer. Any other procedure is not authorized by the statute.

Robert Morgan, Attorney General
Thomas E. Kane,
Ocean Law Consultant
Assistant Attorney General

- - -

5 February 1973

Subject: Public Officers and Employees; Register of Deeds; Indexing and Cross-Indexing of Deeds of Trust

Requested by: The Honorable Mary B. Carriker
Union County Register of Deeds

Question: Do the General Statutes of North Carolina provide that the cross-index of deeds of trust by the grantee (trustee or third party, either) be eliminated, allowing the deeds of

trust to be indexed only by the grantor, the direct index, to the trustee?

Conclusion:

No. G.S. 161-22 requires that deeds of trust be indexed and cross-indexed in the names of all parties to the instrument. However, the register of deeds may omit the name of the secured party or other third party to a deed of trust and index and cross-index it in the name of the grantor and the trustee only.

The pertinent part of G.S. 161-22 provides as follows:

"The register of deeds shall provide and keep in his office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds and other instruments of writing required or authorized to be registered; such indexes to be kept in well-bound books, and shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors or obligees, and shall be indexed and cross-indexed, within twenty-four hours after registering any instrument, so as to show the name of each party under the appropriate letter of the alphabet;"

This language requires that deeds of trust be indexed and cross-indexed in the names of all parties to the instrument.

By Chapter 443, 1967 Session Laws, the legislature amended this statute, adding the following provision:

"Notwithstanding any provision to the contrary in this Section or elsewhere in the General Statutes of North Carolina, the register of deeds may index deeds of trust in the name of the grantor and the trustee only."

This amendment appears to have been intended by the legislature only to authorize or permit the register of deeds to omit the names of secured parties or other third parties in indexing and

cross-indexing deeds of trust. Although cross-indexing the name of the trustee in deeds of trust in the grantee index is rarely useful, the register of deeds must continue to do so until the legislature authorizes otherwise by an appropriate amendment to G.S. 161-22.

Robert Morgan, Attorney General
James B. Richmond,
Assistant Attorney General

- - -

12 February 1973

Subject: Mental Health; Commitment to Local
Mental Institutions

Requested by: Mr. R. Patterson Webb
Acting General Business Manager
Department of Mental Health

Question: Is the Department of Mental Health
empowered to require that all admissions
and commitments to State hospitals and
institutions under its control be made from
local mental health units, admission or
commitment being made in the first
instance to the local mental health unit?

Conclusion: The Department of Mental Health is
empowered to require that all admissions
and commitments, other than criminal
court commitments, be made to local
mental health units so designated by the
Board of Mental Health. Patients thus
committed may be transferred to other
State hospitals or institutions under the
control of the Department of Mental
Health.

Various provisions of Chapter 122 of the General Statutes provide

for admission and commitment of mentally ill or inebriate persons. G.S. 122-3 authorizes the North Carolina Department of Mental Health to establish rules and regulations governing the admission of persons to State hospitals or other institutions under its control. G.S. 122-4 reads in pertinent part as follows:

"It shall be the duty of the North Carolina Department of Mental Health to designate regions for any State hospitals or institutions now or hereafter established for the admission of mentally disordered persons of the State, with authority to change said regions when deemed necessary."

The State Board of Mental Health is authorized to make rules and regulations governing transfer of patients from one State hospital or institution under its control to another State hospital or institution under its control. G.S. 122-13. G.S. 122-56, -58, and -59 provide for voluntary admission, medical certification, and emergency hospitalization respectively. Chapter 122, Article 7 deals with judicial hospitalization.

G.S. 122-83 and G.S. 122-84 provide for hospitalization at Dorothea Dix Hospital or Cherry Hospital of mentally ill persons charged with crimes or acquitted of certain crimes by reason of insanity. G.S. 122-91 provides for observation and treatment of an alleged criminal indicted or charged with commission of a felony to a State hospital on order of the presiding or resident judge of the superior court or the chief district court judge.

G.S. 122-63.1 reads as follows:

"Local mental health centers and other facilities operated by, or in conjunction with, the Department of Mental Health may be designated by the Board of Mental Health, and upon such designation, shall be authorized to receive alleged mentally ill or inebriate persons in the same manner as a State hospital. *In regard to persons involuntarily committed under Article 7 of Chapter 122, the clerk of superior court shall order such persons to be hospitalized to the facility serving his county as designated by the Board*

of Mental Health. Provided that such designation shall be filed in compliance with the requirements regarding the filing of rules and regulations of State agencies."
(Emphasis added)

It is apparent from the foregoing that the clerk of superior court, upon a local mental health center or facility being properly designated by the Board of Mental Health as the facility serving his county, must commit to that unit. It is equally apparent that commitment pursuant to G.S. 122-83 and G.S. 122-84 be either to Dorothea Dix Hospital or to Cherry Hospital, while commitment under G.S. 122-91 may be to a State hospital. We are of the opinion that the Department of Mental Health is empowered to adopt rules and regulations requiring that admissions and commitments of patients be made initially to local mental health facilities, except for criminal court commitments. The Department is also empowered to adopt rules governing transfers of patients so committed.

Robert Morgan, Attorney General
Parks H. Icenhour,
Assistant Attorney General

- - -

12 February 1973

Subject: Criminal Law and Procedure; Contributing
to the Delinquency of a Child;
Non-Professional Drug Treatment Facilities

Requested by: Mr. James R. Tompkins
Governor's Advocacy Commission on
Children and Youth

Question: Does G.S. 14-316.1, contributing to
delinquency and neglect by parents and
others, prohibit non-professional drug
treatment facilities from helping minors, a
minor being someone 16 years of age and
under?

Conclusion: G.S. 14-316.1 does not prohibit non-professional drug treatment facilities as defined in G.S. 90-109 and as licensed under the provisions of G.S. 90-109 from helping minors.

G.S. 14-316.1 makes it a violation of the law for any person knowingly to do any act to produce, promote or contribute to any condition of delinquency of a child. *State v. Sparrow*, 276 N.C. 499, 176 S.E. 2d 897 (1970).

G.S. 14-316.1(b) states:

"Any person who knowingly or willfully causes, encourages, or aids any child under 16 years of age to be in a place or condition, or to commit an act whereby such child could be adjudicated delinquent, undisciplined or neglected as defined by G.S. 7A-278 or who engages in sexual intercourse with such child shall be guilty of a misdemeanor."

G.S. 7A-278(4) defines neglected child as follows:

"'Neglected child' is any child who does not receive proper care or supervision or discipline from his parent, guardian, custodian or other person acting as a parent, or who has been abandoned, or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law."

G.S. 7A-278(5) defines undisciplined child as follows:

"'Undisciplined child' includes any child who is unlawfully absent from school, or who is regularly disobedient to his parents or guardian or custodian and beyond their disciplinary control, or who is regularly found in places where it is unlawful for a child to be, or who has run away from home."

According to your letter, some law enforcement agencies have determined that minors who visit non-professional treatment facilities are prima facie "undisciplined" or "neglected" under G.S. 14-316.1, thereby causing the individuals working in the non-professional treatment facilities to be in violation of this statute.

G.S. 90-109 provides that all non-professional drug treatment facilities in North Carolina must be licensed by the North Carolina Drug Authority. Under G.S. 90-109(c):

"The North Carolina Drug Authority shall not issue a drug treatment facility license to an applicant until it shall satisfy itself that professional and competent medical services are at all times available to the applicant at the drug treatment facility, that a responsible adult will be present or immediately available to the applicant at all times at the drug treatment facility, and that the applicant will make a positive contribution toward controlling drug dependence and assisting drug dependent persons. The North Carolina Drug Authority may deny license applications of proposed or existing drug treatment facilities"

Under G.S. 90-109, a non-professional drug treatment facility which was granted a license by the North Carolina Drug Authority would not through its help and treatment of minors be contributing to their delinquency. A minor who sought help and treatment from a non-professional treatment facility, licensed by the North Carolina Drug Authority, could not under the definitions found in G.S. 7A-278 be determined prima facie to be "undisciplined" or "neglected" merely due to the fact that the minor was visiting such facility.

In order to violate G.S. 14-316.1, the individual so violating the statute must affirmatively act to contribute to the delinquency and neglect of minors. Individuals working in non-professional treatment facilities are not, under the license provisions of G.S. 90-109, prima facie engaging in contributing to such delinquency and neglect. Individuals working in non-professional treatment facilities, licensed in accordance with G.S. 90-109 by the North Carolina Drug

Authority, cannot be said to be in violation of G.S. 14-316.1 merely because an individual who is a minor enters the premises of the non-professional treatment facility.

The individual working in the non-professional treatment facility would have to be charged and found guilty of violating G.S. 14-316.1 upon competent evidence just as any other individual charged under this statute; and the fact that the individual worked at the non-professional treatment facility in and of itself would make no difference.

G.S. 90-109 makes no specific mention of minors or any other age group taking advantage of the facilities offered by non-professional treatment facilities licensed by the North Carolina Drug Authority. Therefore, non-professional treatment facilities, as defined under G.S. 90-109 and as licensed in accordance with the provisions of G.S. 90-109, are open to all individuals regardless of age and the fact that a minor enters a non-professional treatment facility for help does not make that minor "undisciplined or neglected" in violation of G.S. 14-316.1.

Robert Morgan, Attorney General
Henry E. Poole,
Associate Attorney

- - -

13 February 1973

Subject: Criminal Law and Procedure; District Court; Jurisdiction of; Maximum Penalty for Misdemeanor

Requested by: Mr. Thomas F. Kastner
Assistant Solicitor
18th Solicitorial District

Questions: (1) Is G.S. 20-228 unconstitutional in that it provides for imprisonment for a maximum term of five years for a

misdemeanor, the said maximum under the laws of this State being two years for a misdemeanor?

(2) Does the district court have jurisdiction to try and dispose of the matters arising under G.S. 20-228 in that the maximum punishment allowed to be imposed by the district court is two years while North Carolina General Statutes authorized punishment up to five years?

Conclusions:

(1) No.

(2) Yes.

As to Conclusion No. 1, G.S. 14-3 provides:

"§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice or with deceit and intent to defraud.--

(a) Except as provided in subsection (b), every person who shall be convicted of any *misdemeanor for which no specific punishment is prescribed by statute shall be punishable by fine, by imprisonment for a term not exceeding two years, or by both, in the discretion of the court.*

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a felony and punishable as prescribed in § 14-2." (Emphasis added.)

G.S. 20-228 prescribes a specific penalty. Therefore, the two year maximum provided in G.S. 14-3 does not apply.

As to Conclusion No. 2, G.S. 7A-272(a) provides:

"§7A-272. *Jurisdiction of district court.*-(a) Except as provided in this article, the district court has exclusive, original jurisdiction for the trial of *criminal actions*, including municipal ordinance violations, *below the grade of felony*, and the same are hereby declared to be petty misdemeanors." (Emphasis added.)

The violation of G. S. 20-228 is declared a misdemeanor and falls within the jurisdiction of the district court. G.S. 14-3(b) has no application as the violation of G.S. 20-228 would not be of such nature as to be infamous, done in secrecy and malice or with deceit and intent to defraud.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

14 February 1973

Subject: Mental Health; Mentally Ill or Inebriate
Persons; Judicial and Emergency
Commitment; Authority of Sheriff to
Carry Out Orders of Clerk

Requested by: The Honorable D. M. Sawyer, Sheriff
Pasquotank County

Question: May a sheriff use whatever force is
reasonably necessary under existing
circumstances to carry out the orders of
the clerk of superior court involving
examination and transportation of alleged
mentally ill or inebriate persons under the
provisions of G. S. 122-59, G.S. 122-60,
G.S. 122-61, and G.S. 122-62?

Conclusion: A sheriff when ordered by the clerk of

superior court may take into custody, restrain, and transport alleged mentally ill or inebriate persons for examinations to a State hospital or other proper place ordered by the clerk under the provisions of G.S. 122-59, G.S. 122-60, G.S. 122-61, and G.S. 122-62 and may use whatever force is reasonably necessary under existing circumstances to carry out the order of the clerk.

In conducting an examination of an alleged mentally ill or inebriate person and, if warranted, committing to a proper hospital, the clerk acts in a judicial capacity. See *Jarman v. Offutt*, 239 N.C. 468, 80 S.E. 2d 248 (1954). The sheriff is the chief law enforcement officer of the county. *Southern Railway Company v. Mecklenburg County, et al*, 231 N.C. 148, 56 S.E. 2d 438 (1949).

After an affidavit is filed pursuant to G.S. 122-60 stating that the alleged mentally ill or alleged inebriate is likely to endanger himself or others "he may be taken into custody and detained . . . upon order of the clerk of court", G.S. 122-61. G.S. 122-62 provides in pertinent part as follows:

"The clerk is authorized to order the alleged mentally ill person or inebriate to submit to such an examination, *and it shall be the duty of the sheriff or other law enforcement officer to see that this order is enforced.*" (Emphasis added.)

G.S. 122-59 addresses itself to emergency hospitalization of persons believed to be suddenly violent and dangerous to themselves or others. It authorizes the clerk to direct the sheriff or other peace officer to detain such person. It further authorizes the clerk to direct such officer to detain such person for an examination by a physician or to transport him immediately to the appropriate State hospital.

The clerk in carrying out the responsibilities imposed under Articles 6 and 7 of Chapter 122 of the General Statutes acts in a judicial capacity. The sheriff being the chief law enforcement officer of the county is not only authorized but under a duty to see that the

order of the clerk is enforced. It follows that he may use whatever force is reasonably necessary under existing circumstances to execute the order of the clerk.

Robert Morgan, Attorney General
Parks H. Icenhour,
Assistant Attorney General

- - -

21 February 1973

Subject: State Departments, Institutions and Agencies; State Board of Education; Filling of Vacancies; Authority of the Governor to "Redesignate" a Member of the State Board from an At Large Membership to Membership From an Educational District; Article IX, §4(1) of the Constitution of North Carolina

Requested by: Honorable James E. Holshouser, Jr.
Governor of North Carolina

Question: The Governor has the authority to appoint 11 of the 13 members of the State Board, three to hold at large membership and eight to be appointed from the State's eight educational districts, each district being represented by one appointed member. Appointments to fill vacancies are made by the Governor.

May the Governor "redesignate" a member of the State Board from an at large member to a member of a particular educational district thereby creating a vacancy in an at large membership?

Conclusion: No. Article IX, §4(1) of the Constitution

of North Carolina does not authorize the Governor to "redesignate" a member of the State Board from an at large member to a member of a particular educational district.

The State Board of Education consists of 13 members, 11 appointed by the Governor. Eight of the 11 appointed members are to be appointed from the State's eight educational districts, each district being represented by one appointed member, and three are appointed from the State at large. The terms of the appointed members are for eight years. The appointments to fill vacancies are made by the Governor for the unexpired term. Art. IX, §4(1), Constitution of North Carolina.

Dr. Charles E. Jordan was appointed to the State Board as the representative of Educational District 3, his term to expire April 1, 1975. Mrs. Mildred T. Strickland, also a resident of Educational District 3, held an at large membership on the State Board to expire April 1, 1977. Prior to December 7, 1972, Dr. Jordan resigned his post to the State Board, thereby creating a vacancy in the position from Educational District 3. Thereafter transpired the events leading to the present inquiry.

On December 7, 1972, the Honorable Robert W. Scott, Governor of North Carolina, appointed Mrs. Doris Horton to an at large seat on the State Board. Before that date there had been no vacancy among the at large membership of the State Board. However, at the same time Mrs. Horton was appointed, an attempt was made to create an at large vacancy.

By memorandum dated December 7, 1972, directed to the Chairman of the State Board, the Governor stated that Mrs. Strickland, until then an at large member, was being "redesignated" as the representative of Educational District 3. There is no evidence of any resignation by Mrs. Strickland of her at large appointment, nor do the minutes of the State Board reflect any expression of intent by Mrs. Strickland to resign her at large appointment. Furthermore, it does not appear that Mrs. Strickland, orally or otherwise, accepted her "redesignation" as the representative of Educational District 3.

Despite her "redesignation", Mrs. Strickland was to remain on the Board for her original term as an at large member, until April 1, 1977. No mention was made in the memorandum of what term Mrs. Horton was to serve as the new at large member.

Without in any way reflecting upon the qualifications of Mrs. Horton or upon the wisdom of the former Governor's selection, this office must conclude that as a matter of law, the attempt to appoint Mrs. Horton to the State Board as an at large member was a nullity; that Mrs. Strickland continues in her appointment as an at large member of the State Board until April 1, 1977; and that the District 3 position on the State Board is presently vacant.

Where the duration of the term of a public office is fixed, and where a vacancy occurs in the office, the vacancy is in the term of office as distinct from being in the office itself. An appointment to fill such a vacancy can be only for the unexpired portion of the term. *State v. Smiley*, 304 Mo. 549, 263 S.W. 825. With respect to this general rule, it is stated in 67 C.J.S., Officers §53(a), p 216:

"This rule is particularly applied in the case of appointive offices where the beginning of the term of the first appointee determines the limits of the term of successive appointees, so that one appointed in the middle of the term, because of the vacation of an office during the term of an incumbent . . . is not appointed for longer than the unexpired term. The term is controlled by the law and not by the commission issued to the officer."

The terms of office, including duration and special restrictions as to residence of certain of the appointees, of those members of the State Board appointed by the Governor and the authority of the Governor to fill vacancies which may occur are specifically set forth in the Constitution of North Carolina. The power of the Governor in this respect is derived from the Constitution, and he can do no more than authorized by the Constitution. *Thomas v. Board of Elections*, 256 N.C. 401.

Article IX, §4(1) of the Constitution of North Carolina does not

authorize the Governor to redesignate any member of the State Board from that of an at large member to membership from a particular educational district. Had Mrs. Strickland resigned her at large position and been appointed by the Governor to fill the vacancy in the position from Educational District 3, the action of the Governor would have been unquestionable. However, Mrs. Strickland did not resign. Instead, without apparent or actual authority from the Constitution, Mrs. Strickland was "redesignated" from an at large member to a member from Educational District 3. Such "redesignation" was a nullity and Mrs. Strickland continues to serve as an at large member of the State Board until April 1, 1977.

Because no at large vacancy existed, Governor Scott was without authority to appoint Mrs. Horton to an at large membership on the State Board. There presently exists, therefore, a vacancy on the State Board from Educational District 3 for the unexpired term previously held by Dr. Jordan.

Robert Morgan, Attorney General
Andrew A. Vanore, Jr.,
Deputy Attorney General

- - -

1 March 1973

Subject: Public Officers and Employees; Conflict of Interest; County Board of Education; Purchase from Company of Which Member is Partner; Applicability of G.S. 14-236 and 14-237

Requested by: Mr. Garrett Dixon Bailey
Attorney, Yancey County Board of Education

Question: Do the provisions of North Carolina General Statutes 14-236 and 14-237 prohibit the Yancey County Board of

Education from purchasing automotive supplies from Styles Automotive Supply or Styles and Company, a partner of which is a member of the Yancey County Board of Education?

Conclusion:

The provisions of N.C.G.S. 14-236 do prohibit the Yancey County Board of Education from purchasing supplies from a firm, a partner of which is a member of the board of education, because as a partner the member has a pecuniary interest in the merchandise supplied to the board.

North Carolina G.S. 14-236 when applied to the fact situation in this case prohibits the board of education from obtaining supplies from any person, corporation or partnership in a situation wherein any member of the board has a "pecuniary interest" proximately or remotely in supplying any goods, wares or merchandise of any nature or kind whatsoever for the school.

The North Carolina Supreme Court in the case of *State v. Weddell*, 153 N.C. 479, found that where a member of a municipal board of aldermen was merely an employee receiving a salary from a company awarded a contract by the board of aldermen for street paving, his status as an employee did not rise to the status of a pecuniary interest sufficient to create a conflict of interest prohibited by statute. In a case specifically applicable to boards of education and specifically construing the predecessor section to G.S. 14-236, the Court in *State v. Debman*, 196 N.C. 740, held that where a school board member was merely an employee engaged with a monthly salary on the payroll of a firm which furnished school trucks to the Greene County Board of Education, his status as an employee was not sufficient to give him a pecuniary interest in furnishing goods to the board of education.

In the present case, however, the member in question is a partner in the firms of Styles Automotive Supply and Styles and Company. He is far more than a mere employee but definitely has a pecuniary interest in the firms. The board of education through its agent the

foreman is prohibited from purchasing supplies from Styles Automotive Supply and Styles and Company and the provisions of North Carolina General Statute 14-237 which provides for the removal of any board of education member where the board purchases its school supplies from a business or firm in which he has a pecuniary interest would be applicable to board member Wade Styles.

Thus, while Mr. Styles is serving as a duly qualified member of the Yancey County Board of Education, the board of education school bus garage can purchase no parts, supplies or other materials from Styles Automotive Supply and Styles and Company.

Robert Morgan, Attorney General
Emerson D. Wall,
Associate Attorney

- - -

1 March 1973

Subject: Criminal Law and Procedure; Bail; Public Drunkenness; Holding a Public Drunk in Jail Until Sober; No Authority

Requested by: Captain W. Ottis Moore
Captain of Detectives
Rocky Mount

Question: May a jailer hold a person in custody who has been arrested for public drunkenness until he is sober when the person has secured bail?

Conclusion: No. There is no statutory authority to hold a person in jail for him to "sober up" after he has made bail where the person has been arrested for public drunkenness.

The facts presented indicate that some jailers have a policy not to

release a person who has been arrested for public drunkenness or driving under the influence for a period of three or more hours for him to "sober up" even though the person has made bail.

G.S. 15-47 provides in essence that when any person is arrested, with or without warrant, it is the duty of the arresting officer to inform him of the charge immediately, and to have bail fixed, and the person shall be permitted to give bail, except in capital cases. If the arresting officer fails to take this action for bail, the custodian of the arrested person has the duty to have bail fixed.

Construing this statute, the North Carolina Court of Appeals in *State v. Hill*, 9 N.C. App. 279, held that G.S. 15-47 means that when the required bail is given, the accused is to be released; and that the conduct of the jailer who refused to release the defendant after bail is given violates the statute.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

8 March 1973

Subject: Municipalities; Streets and Highways;
Powell Bill Funds; Adjustments of
Allocation

Requested by: Mr. Billy Rose
State Highway Administrator

Question: May the Commission properly make
adjustments in the 1972 allocation of
Powell Bill funds paid in October of that
year to five municipalities to reflect an
increase in population since revisions to the
certified census were not known at the
time the payment was made?

Conclusion: Yes. G.S. 136-41.1 authorizes the Commission to withhold up to one percent of the Powell Bill funds for the purpose of correcting errors in allocation.

State aid to municipalities for street construction and maintenance is based upon mileage and population of the municipality based upon the latest certified federal decennial census. G.S. 136-41.1. The facts as indicated in a memorandum from the State Highway Administrator are that the Powell Bill allocations to municipalities in October of 1972 did not reflect revisions in the certified decennial census filed with the Secretary of State's Office by the Bureau of Census in February of 1972. According to the revisions filed, the population of Apex increased 42, Cary 5, Rolesville 4, Statesville 11 and Winston-Salem 770. The Acting Administrator inquired as to the propriety of making an additional payment to the five municipalities to reflect the increase in population.

G.S. 136-41.1 provides that the Commission is authorized to withhold each year from the allocation made in October an amount not to exceed one percent of the total Powell Bill funds appropriated for the purpose of correcting errors in allocation. This Office is of the opinion that this statute authorizes the State Highway Commission to make additional payments to these municipalities to reflect the increase in population of each from the amount retained by the Commission for the purpose of correcting errors.

Robert Morgan, Attorney General
Eugene A. Smith,
Assistant Attorney General

- - -

8 March 1973

Subject: Probation; Conditions of;
Self-Improvement Centers

Requested by: Mr. George W. Barnes
Administrator
Department of Correction

Question: Would referral to self-improvement centers which provide post-trial services for the convicted offender qualify as a legal condition of probation?

Conclusion: Referral of a convicted offender to a self-improvement center would qualify as a legal condition of probation.

G.S. 15-199 provides an outline of some possible conditions of probation which, among others, may be imposed on the defendant. In *State v. Foust*, 13 N.C. App. 382, 386, 185 S.E. 2d 718, the Court said:

"G.S. 15-199 grants the court broad authority to impose conditions of probation. The fact the conditions involved here are not among those specifically listed as permissible under the statute is not determinative because the statute provides: 'The court shall determine and may impose, by order duly entered, and may at any time modify the conditions of probation and may include among them the following, or any other'" (Emphasis added)

Conditions of probation imposed by the court, however, must not be violative of the defendant's constitutional rights. *State v. Caudle*, 276 N.C. 550, 173 S.E. 2d 778. Furthermore, because the conditions imposed under a suspended sentence are different from the punishment prescribed by law for the offense, the defendant's consent to conditions is generally necessary. *State v. Jackson*, 226 N.C. 66, 36 S.E. 2d 706; *State v. Doughtie*, 237 N.C. 368, 74 S.E. 2d 922.

In light of the foregoing, referral to a self-improvement center would not constitute an unreasonable condition in violation of defendant's constitutional rights where the defendant consents to it as a condition for probation.

Robert Morgan, Attorney General
Ralf F. Haskell,
Associate Attorney

13 March 1973

Subject: State Departments, Institutions and Agencies; Correction, Department of; Records Section; Confidentiality of Records

Requested by: Mr. David L. Jones, Secretary
Social Rehabilitation and Control

Questions: (1) Must all information contained in an inmate's file be classified as public information; and therefore must be released upon request from an individual?

(2) Is part of the information in an inmate's file public information and part confidential information; and if so, what guidelines are to be used in determining which is to be released and which is to be withheld?

(3) Is all information contained in an inmate's file confidential and cannot be released?

Conclusion: Part of the information contained in an inmate's jacket maintained by the Combined Records Section is confidential information, not subject to release to either the public or the inmate concerned.

G.S. 148-74, *Records Section established*, and G.S. 148-76, *Duty of Records Section*, were recently construed by the North Carolina Court of Appeals in *Goble v. Bounds*, 13 N.C. App. 579, 186 S.E. 2d 638 (1972). In *Goble v. Bounds, supra*, the North Carolina Court of Appeals stated:

" . . . G.S. 148-74 states the administration of the Records Section is under the control and direction of the Director of Probation, the Commissioner of

Correction, and the chairman of the Board of Paroles, and G.S. 148-76 states the information collected shall be made available to law enforcement agencies, courts, correctional agencies, or other officials requiring criminal identification, crime statistics, and other information respecting crimes and criminals. *These records are confidential and only named parties have access to them.*" (Emphasis added.)

Goble v. Bounds, *supra*, was appealed to the Supreme Court of North Carolina, and in *Goble v. Bounds*, 281 N.C. 307, 188 S.E. 2d 347 (1972), the Supreme Court, in reviewing the statutory basis for the Combined Records Section, stated that:

"The authorities are required to keep a file on each person admitted to prison and to make a periodic review to ascertain whether the prisoner's conduct and attitude merit his release earlier than the time fixed by the court's sentence. The file must contain the name and address of the judge, of the investigating officer, and of the State's prosecutor. These sworn officials know more of the background of the case than the record discloses. The identity of these officers is a required part of the prisoner's file. Hence, the officers may be consulted on matters in addition to that which the record discloses. Their reports would be of more value, perhaps, if they were treated in confidence."

The Court then quoted with favor the statement found in *Tarlton v. United States*, 430 F. 2d 1351 (5th Cir. 1970):

"'By his first motion Tarlton sought to obtain access to his prison file to learn the source of a derogatory statement which was allegedly made concerning him. As the District Court held, *prison records of inmates are confidential and are not subject to inspection by the public nor the inmate concerned.*' (Emphasis added.)"

In reviewing the question of whether a probation report must be

delivered for scrutiny to a defendant or his attorney, the Fourth Circuit Court of Appeals stated:

" . . . It could defeat the object of the report . . . by drying up the source of such information. See *United States v. Fischer*, 381 F. 2d 519 (3 Cir., July 24, 1967.) To illustrate, the probation officer could be deprived of the confidence of trustworthy and logical informants--persons close to the accused--if they knew they could be confronted by the defendant with their statements. The investigation would then amount to no more than a repetition of the public records--so limited a function as to obviate the need of a probation officer." *Baker v. United States*, 388 F. 2d 931, 933 (4th Cir. 1968).

Our experience with the inmate files maintained by the Combined Records Section has revealed that the jackets contain such items as the confidential reports of psychiatrists and psychologists, Diagnostic Reports and Classification Referrals of the Diagnostic Center, as well as medical reports. In support of the classification procedures of the Department of Correction, the files contain the confidential reports of correctional officials expressing their opinions of the inmate, as well as the memorandum of the Central Classification Committee upon inmate classification. The Combined Records jacket also contains parole investigation reports, together with the responses of various officials whose confidential opinions have been sought.

In view of the foregoing, and upon consideration of the applicable case law and statutes, we believe that the Public Relations Guidelines adopted by the Commission of Correction at its October 1972 meeting provides a balanced approach. Rule 1-402(b) of the Public Relations Guidelines of the Department of Correction reads as follows:

"Matters of public record shall be made available for examination upon request. Copies may be provided at the expense of the requester. An inmate's or ex-inmate's name, age, race, sex, offense for which convicted, court where sentenced, length of sentence,

date of sentencing, date of arrival at or transfer from a prison, program placements and progress, conduct grade, custody classification, disciplinary offenses and dispositions, escapes and recaptures, dates regarding release, and the presence or absence of detainees shall be considered matters of public record. Other contents of inmate files shall not be disclosed to unofficial agencies or persons without the specific authorization of the Commissioner of Correction, who will secure the advice of the Attorney General when the legality of release or withholding is at issue."

Robert Morgan, Attorney General
Jacob L. Safron,
Assistant Attorney General

- - -

21 March 1973

Subject: State Departments, Institutions and Agencies; Real Property; Sale; Department of Administration; Counties

Requested by: Honorable George Rountree, III
Senator
North Carolina General Assembly

Question: (1) Do the General Statutes prohibit the State, through the Department of Administration, from selling real property at private sale without giving notice of sale or handling of sale by public auction?

(2) Do the General Statutes prohibit the board of commissioners of a county from selling real property at private sale without giving notice of sale or handling of sale at public auction?

Conclusion: The General Statutes give both the Department of Administration and the boards of county commissioners authority to sell real property, and there is no requirement that either give notice of sale or sell at public auction.

The disposition of State-owned lands is governed by the provisions of Article 7 of Chapter 146 of the General Statutes. This Article provides, in part, that any such land to be disposed of must be declared surplus by the agency to which it is allocated, an application must be filed with the Department of Administration and that Department must investigate to determine if the disposition is in the best interest of the State. G.S. 146-29 is entitled "Procedure for sale, lease or rental." This statute provides that after investigation the Department of Administration may proceed with the sale under rules adopted by the Governor and Council of State. If agreement for sale is reached, then the sale must be approved by the Council of State.

Nothing in these statutes, or any rule of the Council of State, requires any public notice nor the sale of property at public auction.

As to counties, G.S. 153-9(14) provides that the boards of commissioners of the several counties have power " . . . to sell or lease any real property of the county and to make deeds or leases of the same to any purchaser or lessee."

There is no restriction contained in this statute to prohibit the sale of real property at private sale nor is there any requirement for any public notice of sale at public auction.

Robert Morgan, Attorney General
Rafford E. Jones,
Assistant Attorney General

- - -

21 March 1973

Subject: Mental Health; Courts; Sheriffs; Judicial

Commitment; Transportation of Mentally
Ill Persons or Inebriates; Authority of Clerk
to Issue Order for Out-of-County
Transportation

Requested by: Mr. R. Patterson Webb
Business Manager
North Carolina Department of Mental
Health

Question: Does the clerk of the superior court have
authority to direct the sheriff to transport
an alleged mentally ill person or inebriate
to another county for examination as part
of the judicial hospitalization proceedings?

Conclusion: The clerk of the superior court has
authority to direct the sheriff to transport
an alleged mentally ill person or inebriate
to another county for examination as a
part of judicial hospitalization proceedings.

It seems that the question has its derivation in the North Carolina Department of Mental Health plan to utilize the area mental health programs authorized by Article 2C, Chapter 122, as the portals of entrance for mental patients into mental hospitals. Under this plan, it is expected that there will be many instances where one mental health center will serve several counties. Apparently some uncertainty has arisen as to the authority of the clerks of the superior courts to issue a binding order for the sheriff to transport the individual concerned from one county to another for the purpose of this examination by qualified physicians at the center.

G.S. 122-60 constitutes the basic authority for this examination of the individual when " . . . some reliable person having knowledge of the facts shall make before the clerk of the superior court of the county in which the alleged mentally ill person or alleged inebriate is or resides, and file in writing, on a form approved by the State Department of Mental Health, an affidavit that the alleged mentally ill person or alleged inebriate is in need of observation or admission in a hospital for the mentally ill or inebriate, together

with a request that an examination of the proposed patient be made." G.S. 122-61 then provides for custody and detention of the individual prior to the hearing, where necessary. Further, G.S. 122-62 provides that the clerk of superior court, where appropriate, will direct two uninvolved physicians to examine this individual and states that, when an order is issued, " . . . it shall be the duty of the sheriff or other law enforcement officer to see that this order is enforced."

In a previous opinion, the Attorney General has held that the clerk of the superior court has the authority to direct the sheriff to take into custody an allegedly mentally ill person or inebriate. See 42 N.C.A.G. 43 (1972). In addition, another Attorney General's opinion has been rendered to the effect that the sheriff has the responsibility for transporting a judicially committed mentally ill person or inebriate to a hospital when ordered to do so by the clerk. See 41 N.C.A.G. 457 (1971). Thus, the only real issue involved in the situation presented here is whether the same rule applies to transportation of a potential patient to another county for the examination by physicians required as part of the commitment proceedings.

Article 7 of Chapter 122, entitled "Judicial Proceedings", delineates the commitment procedures involved here. As might well be expected, the North Carolina Supreme Court has recognized that the type of proceedings involved is, in truth, a judicial process. See *Bailey v. McGill*, 247 N.C. 286, 100 S.E. 2d 860 (1957); *Jarman v. Offutt*, 239 N.C. 468, 80 S.E. 2d 248 (1954). This being true, it is clear beyond peradventure of a doubt that the directive of the clerk of the superior court requiring transportation and examination of the patient is a court order.

It has long been recognized in North Carolina that the sheriff is the chief law enforcement officer of the county. See *Southern Railway Company v. Mecklenburg County, et al*, 231 N.C. 148, 56 S.E. 2d 438 (1949). The office of sheriff is a constitutional one (*Borders v. Cline*, 212 N.C. 472, 193 S.E. 826 (1937); Constitution of North Carolina, Article VII, §2) and that his duties are statutory (*Commissioners v. Stedman*, 141 N.C. 448, 54 S.E. 269 (1906)). Turning to the applicable statute, G.S. 162-16 binds the sheriff "to serve or execute any summons, order or judgment" when required to do so.

The transportation involved in the situation presented is a vital and necessary part of the judicial proceedings. The fact that it involves taking the patient to another county does not detract from the officiality of the clerk's order. In passing it should be noted that similar conclusions previously have been reached regarding the sheriff's obligation to comply with judicial orders issued in other comparable situations. In this respect, see 42 N.C.A.G. 127 (1972) relative to the sheriff transporting women prisoners to another county where suitable detention facilities are available and 40 N.C.A.G. 677 (1970) regarding the *carte blanc* requirement for transporting juveniles to training schools, with no stipulation as to the locales of the training schools.

Here, too, akin to the above situations, the clerk's order directing transportation for examination in another county as part of the commitment proceeding is binding on the sheriff.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

21 March 1973

Subject: Education; Use of Tax Funds for the
Support of Athletic Programs

Requested by: Mr. Arthur S. Alford
Superintendent
Pitt County Schools

Question: May tax funds be used for the purchase
of athletic equipment, for the construction
of athletic facilities and for the payment
of supplements to coaches?

Conclusion: The use of tax funds for the purchase of
athletic equipment and for the
construction of athletic facilities is

authorized by G.S. 115-78(e) provided such expenditures are authorized by the General Assembly, the State Board of Education or the local board of education and funds are made available. Tax funds may be used for the payment of supplements to coaches under the provisions of G.S. 115-80(a).

The general question presented is whether or not tax funds may be used for the support of athletic programs in the public school. More specifically, the question is whether or not tax funds may be used for the purchase of athletic equipment, for the construction of athletic facilities and for the payment of supplements to coaches.

There would appear to be little question but that the expenditure of tax funds for the support of athletic programs is a "public purpose" and that, therefore, tax funds may be expended for such purposes, with the approval of the General Assembly, provided, the approval of the voters is obtained. In *Boney v. Kinston Graded Schools*, 229 N.C. 136, 48 S.E. 2d 56 (1937), the court said:

"Assuredly, nothing in our Constitution denies to the General Assembly power to enact appropriate statutes authorizing a legally established public school district to issue bonds or to levy taxes for the establishment and maintenance of an athletic stadium for its students upon land owned and controlled by it when authorized so to do by a vote of the majority of the qualified voters in the school district." (At page 141)

The question here, however, is whether tax funds made available to the board of education by the county commissioners may be used to support athletic programs. In order to answer that question two problems must be considered. The first is whether there is anything in the General Statutes which would authorize such expenditures; the second, whether such expenditures are for a "necessary expense".

Expenditures for the support of athletic programs in the public schools are nowhere specifically authorized in the General Statutes.

G.S. 115-78 outlines the objects of expenditures for the operation of the public schools. Subsection b(6) of that statute authorizes expenditures for " . . . health, including clinics and recreation." While "recreation" could reasonably be interpreted as authorizing the use of tax funds for the support of intramural athletic programs, an interpretation of the word "recreation" extending its meaning to authorize the use of tax funds for the support of intermural athletic programs would be strained and unreasonable. G.S. 115-78(e), however, speaks in more general terms. It provides:

"(e) *Other objects of expenditure*, including educational television, may be included in the school budget when authorized by the General Assembly, the State Board of Education, or county and city boards of education, when funds for the same are made available." (Emphasis added)

In *Boney v. Kinston Graded Schools*, *supra*, the court said "Physical training is a legitimate function of education." As physical training certainly includes athletic programs and as G.S. 115-78(e) was apparently intended to cover those objects of expenditure not otherwise expressly enumerated, it would appear that expenditures for the support of athletic programs could reasonably be interpreted as falling within the phrase "other objects of expenditure".

Whether or not expenditures for the support of athletic programs would be a "necessary expense" is a more difficult question. "Necessary expense" is a term of art with no precise definition. Generally speaking, "expenditures for the maintenance of the public peace, the administration of justice, the discharge of a governmental function, or the exercise of a portion of the State's delegated sovereignty, are for necessary expenses." 7 Strong's *N.C. Index 2d*, Taxation, §6.

Although there is no case in this jurisdiction expressly dealing with the question of whether or not the support of athletic programs in the public schools is a "necessary expense", several cases deal generally with the question of what expenditures for the operation of the public schools are "necessary expenses". In *School District v. Alamance County*, 211 N.C. 213, 189 S.E. 873 (1937), it was held that the operation of the public schools as required by Article

IX of the Constitution was a "necessary expense" not requiring a vote of the people; in *Harris v. Board of Commissioners*, 274 N.C. 343, 163 S.E. 2d 387 (1968), it was held that G.S. 115-80(a) authorized the county board of commissioners to levy a tax on property to supplement teachers' salaries without the approval of the electorate; and in *Yoder v. Board of Commissioners*, 7 N.C. App. 712, 173 S.E. 2d 119 (1970), cert. den. 276 N.C. 729 (1970), it was held that G.S. 115-81 authorizing the establishment of a county school reserve fund and the expenditure of such funds under the provisions of G.S. 115-78(c) was a "necessary expense" not requiring a vote of the people.

Several things may reasonably be inferred from the above cited authorities. First, it is clear that any expenditures for the operation of the constitutional school term are "necessary expenses" not requiring a vote of the people. Second, physical training, of which athletic programs would certainly be a part, is a valid and necessary part of the educational process. Third, it can reasonably be implied from the decisions in *Harris v. Board of Commissioners*, *supra*, and *Yoder v. Board of Commissioners*, *supra*, that those expenditures for the operation of the public schools which have been specifically or impliedly authorized by the General Assembly are "necessary expenses" and may be made without the approval of the electorate.

Upon the basis of this conclusion and the conclusion that expenditures for the support of athletic programs are authorized by and fall within the provisions of G.S. 115-78(e), it would appear that, as the purchase of athletic equipment and the construction of athletic facilities are integral and necessary parts of an athletic program, tax funds may be expended for such purposes without a vote of the people. It should be noted, however, that G.S. 115-78(e) requires that the authorization of the General Assembly, the State Board of Education or the local board of education must be obtained and funds must be available. Thus, before expending any tax funds for the purchase of athletic equipment and the construction of athletic facilities you must obtain authorization, at least, from the local board of education and funds must be made available for the purposes.

The expenditure of tax funds for supplements to the salaries of coaches presents a slightly different problem. In *Harris v. Board of*

Commissioners, supra, it was held that, pursuant to G.S. 115-80(a), taxes could be levied to provide supplements to the salaries of teachers without a vote of the people. As there is a specific provision for supplements to the salaries of teachers, it would appear that the general provisions of G.S. 115-78(e) would be inapplicable and that the expenditure of tax funds for supplements to the salaries of coaches must be made under and in conformity with the provisions of G.S. 115-80(a) and not under the provisions of G.S. 115-78(e).

Robert Morgan, Attorney General
Edwin M. Speas, Jr.,
Associate Attorney

- - -

22 March 1973

Subject: Redevelopment Commissions; Conflict of
Interest; Member of Commission Leasing
Part of Building from Redeveloper

Requested by: Miles B. Fowler
Attorney for Redevelopment Commission
of Clinton

Question: If a redeveloper purchases land from a
redevelopment commission and constructs
a building thereon, may a member of the
commission lease a portion of the building
from the redeveloper in view of G.S.
160-461?

Conclusion: No. Such a lease would be contrary to the
broad language of G.S. 160-461, and the
commission member's action would
constitute misconduct in office under the
statute.

G.S. 160-461 provides in part:

"No member or employee of a commission shall acquire any interest, direct or indirect, in any redevelopment project or in any property included or planned to be included in any redevelopment area, or in any area which he may have reason to believe may be certified to be a redevelopment area, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used by a commission, or in any contract with a redeveloper or prospective redeveloper relating, directly or indirectly, to any redevelopment project. The acquisition of any such interest in a redevelopment project or in any such property or contract shall constitute misconduct in office. . . ."

Thus, it is our opinion that the language of G.S. 160-461 prohibits the contemplated lease.

Robert Morgan, Attorney General
James F. Bullock,
Assistant Attorney General

- - -

23 March 1973

Subject: Taxation; Ad Valorem; Reduced Valuation
of Property of the Elderly; Executors; G.S.
105-277.1

Requested by: Mr. D. R. Holbrook
Administrative Officer
State Board of Assessment

Question: May the executor of the estate of a
decedent dying January 3 file on behalf of
the estate for the special property tax
exclusion provided in G.S. 105-277.1?

Conclusion: The reduced property valuation exclusion

must be claimed by the owner of the property himself and cannot be claimed by the executor of his estate on his behalf.

G.S. 105-277.1, effective January 1, 1972, has not as yet been the subject of judicial interpretation. However, its contents when viewed contextually reveal a legislative scheme to provide favored ad valorem tax treatment to only "any person entitled thereto at the time he lists his property for taxation." While it is true that one's eligibility is determined as of January 1, that in itself is not determinative, for once eligibility is established, the exclusion must still be affirmatively claimed by the taxpayer "at the time he lists his property for taxation." The exclusion once initially established is not automatically continued and those who qualify must affirmatively assert their eligibility each listing year.

We can read these requirements only as providing a special property tax exclusion, personal to the owner thereof which, if not claimed by him, may not be passed to his estate to be claimed on his behalf by his executor. Statutory construction and legislative intent aside, we note also the obvious consideration that G.S. 105-277.1 is available only to legal and equitable title owners, and by the time an executor lists a decedent's property, title thereto would already have vested in his devisees or heirs at law.

Robert Morgan, Attorney General
George W. Boylan,
Associate Attorney

- - -

23 March 1973

Subject: Taxation; Intangibles; Annuity Contracts;
G.S. 105-202

Requested by: Mr. A. R. Waters, Director
Intangibles Tax Division
Department of Revenue

Question: Are annuity contracts subject to the North Carolina intangibles tax?

Conclusion: Annuity contracts are subject to the North Carolina intangibles tax.

Annuity contracts comprise agreements whereby a fixed amount is directed to be paid absolutely and without contingency and generally arise where a purchaser pays a lump sum to a grantor who engages to pay a stipulated sum annually to a beneficiary for life. "An annuity is a fixed amount directed to be periodically paid without contingency." *Hunter v. First National Exchange Bank of Roanoke*, 198 Va. 637, 96 S.E. 2d 104, 108. They may be issued by insurance companies, charitable organizations, families, colleges and other similar organizations.

G.S. 105-202 provides in pertinent part:

"Bonds, notes, and other evidences of debt.--All bonds, notes, demands, claims, deposits or investments in out-of-state building and loan and savings and loan associations and other evidences of debt however evidenced . . . having a business, commercial or taxable situs in this State . . . shall be subject to annual tax," (Emphasis added)

In 1936, the North Carolina Supreme Court in *Hardware Mutual Fire Insurance Company v. Stinson*, 210 N.C. 69, 185 S.E. 449 (1936), examined Sec. 7971 (47) of the former North Carolina intangibles tax law. That section allowed as an intangibles tax deduction, "all bona fide indebtedness owing by any taxpayer." The Supreme Court determined that unearned premium reserve funds which were required by statute to be maintained by insurance companies in order to be refunded on a pro rata basis to contract beneficiaries in case of the cancellation of their insurance were liabilities and bona fide indebtedness of the insurance companies entitled to be deducted by them from their otherwise taxable intangibles. Similarly, the liability undertaken by the grantor of an annuity contract is an indebtedness by him and the contract, or more specifically, the contract right embodied therein, is an intangible property right of the beneficiary.

In May 1938, this office advised A. J. Maxwell, Commissioner of Revenue, that an annuity contract placed at a bank as collateral for a loan is taxable to the individual to whom originally issued.

In a true, if not a colloquial, sense, an annuity policy is an "evidence of debt". *Cannon v. Nichalas*, C.C.A. Colo., 80 F. 2d 934, 936.

"The term 'indebted' means that a complete and absolute liability exists--complete and absolute to the extent that ultimate payment must be made--but it does not necessarily mean that such liability has matured or that an indebtedness is immediately payable. 'Indebtedness' includes as well obligations which are yet to become due as those which are already matured." *Provident Mutual Building Loan Assn. v. Davis*, 143 Cal. 253, 76 P2d 1034.

The grantor in an annuity contract unconditionally obligates himself to his beneficiary for periodic payments and his beneficiary has a legally enforceable right to receive those payments. In G.S. 105-202, "other evidences of debt however evidenced," the term "debt" is utilized in a large and general sense and quite properly includes the right to receive payments under an annuity contract.

Robert Morgan, Attorney General
George W. Boylan,
Associate Attorney

- - -

4 April 1973

Subject: Social Services; Adoption of Minors;
Definition of "Stepchild" in G.S. 48-2(5);
Applicability of Presumption of Death

Requested by: Mrs. Renee Westcott, Commissioner
Department of Social Services

Questions: (1) In an adoption proceeding is the
surviving spouse the stepparent of the
deceased spouse's natural child by a third
party?

(2) If in an adoption proceeding the natural parent's whereabouts have been unknown for seven years, can he be presumed to be legally dead?

Conclusions:

(1) In an adoption proceeding the surviving spouse is the stepparent of the deceased spouse's natural child by a third party.

(2) In an adoption proceeding, a parent cannot be presumed legally dead after his whereabouts have been unknown for seven years.

G.S. 48-2(5) defines "stepchild" as "the child of one spouse by a former union, whether or not such child was born in wedlock." If one's spouse has a child by a third party, one is a stepparent to that child; and nothing contained in the statute terminates the relationship of stepparent-stepchild upon the death of one's spouse. Therefore, the surviving spouse as a stepparent in a proceeding to adopt the natural child of his deceased spouse is exempted from the six months residency requirement in G.S. 48-4(c) and may have the entering of the interlocutory decree and the probationary period before the granting of a final order of adoption waived by the court under G.S. 48-21(c).

G.S. 28A-1 provides that death is not to be presumed from seven years absence. G.S. 28A-1 through G.S. 28A-22 pertain to the estates of missing persons. G.S. 48-5 through G.S. 48-9 provide the conditions under which the consent of the parent is not required for the adoption of the child. G.S. 48-7(c) permits service of process by publications of summons if the address of the parent cannot be ascertained after a diligent search. The intent of the Legislature is to protect the welfare of the child and safeguard the rights of the natural parent. To accomplish this, the Legislature established a statutory procedure to be adhered to in terminating old and creating new parental relationships. Statutory provisions pertaining to the estates of missing persons and other matters are not to be substituted for this procedure. Therefore, the fact that a parent's

whereabouts have been unknown for seven years does not affect the provisions of G.S. 48-5 through 48-9 which govern the adoption proceeding.

Robert Morgan, Attorney General
Robert F. Reilly,
Associate Attorney

- - -

4 April 1973

Subject: Infants and Incompetents; Juvenile Training Schools; Applicability of State Statutes; Use of Cigarettes by Minors; Responsibilities of Training School Staff

Requested by: Mr. James M. Paige, Commissioner
Office of Youth Development

Questions: (1) Does a student who is in a training school operated by the State of North Carolina and who is under the age of 17 years have the right to smoke?

(2) Does the staff of a training school operated by the State of North Carolina have the right to give cigarettes to a student therein who is under the age of 17 years?

(3) Is it legally correct to allow a student who is in a training school operated by the State of North Carolina and who is under the age of 17 years to smoke in the presence of members of the staff of the training school?

(4) Is it legally permissible to sell cigarettes to a student who is under the age of 17 years and who is in a training

school operated by the State of North Carolina while on the campus of the training school?

Conclusions:

(1) A student who is in a training school operated by the State of North Carolina and who is under the age of 17 years does not have the right to smoke.

(2) A staff member of a training school operated by the State of North Carolina does not have the right to give cigarettes to a student in the training school who is under the age of 17 years.

(3) It is not legally permissible to allow a student who is in a training school operated by the State of North Carolina and who is under the age of 17 years to smoke in the presence of members of the staff of the training school.

(4) It is not legally permissible to sell cigarettes to a student who is in a training school operated by the State of North Carolina and who is under the age of 17 years while on the campus of the training school.

All of these conclusions are primarily based upon the language of G.S. 14-313, which provides as follows:

"§ 14-313. *Selling cigarettes to minors.*--If any person shall sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, to any minor under the age of seventeen years, or if any person shall aid, assist or abet any other person in selling such articles to such minor, he shall be guilty of a misdemeanor punishable by a fine

not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both."

It is patent that the language of the statute just quoted proscribes giving or selling cigarettes to *any* minor under the age of 17 years. The statute fails to provide any exception to its provisions based upon an individual being in a training school or the transaction occurring on the campus of the training school and there is no indicia that the Legislature intended to exclude such transactions from the clear provisions of G.S. 14-313.

While the wording of this controlling statute is levied against the persons who shall provide cigarettes to the minors covered, it is obvious that the end in view is to prohibit minors under 17 years of age from having these smoking materials. Thus, the conclusion that the minor has no "right" to smoke is inevitable.

With regard to the permissibility of staff members of the training school allowing students to smoke in their presence, it is necessary to examine the purpose of the training schools and the relationship of the staff to the students. G.S. 134-11 provides that these schools, *inter alia*, "shall accept and train all delinquent children of all races and creeds under the age of 18 as may be committed to the State Department of Youth Development" by appropriate courts. G.S. 134-27 provides that the Department of Youth Development shall establish appropriate programs for rehabilitation of the youths committed to these schools. The end in view, according to this last cited statute, is to teach the students at the school "the precepts of religion, morals, good citizenship and industry." It can hardly be argued that permitting a student to violate the law in the presence of a staff member is calculated to rehabilitate the youth concerned or to achieve the ends envisioned by the members of the General Assembly at the time they ratified G.S. 134-27. Quite to the contrary, it would appear that, in view of the relationship between the members of the staff and the students at the training school, the duty would devolve upon the staff member observing this kind of activity to take appropriate steps to terminate it.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

4 April 1973

Subject: Mental Health; Alcoholism; Federal Grants;
Disclosure of Information; Reports

Requested by: Mr. R. Patterson Webb
General Business Manager
Department of Mental Health

Question: May the Secretary of Health, Education and Welfare require information concerning alcohol abuse and alcoholism and the treatment thereof be reported to him by a state participating in a plan approved under the Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970?

Conclusion: The Secretary of Health, Education and Welfare may require that a state participating under the provisions of the Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970 provide to him, or his duly authorized agent, such information with respect to research and treatment as may be necessary to enable the Secretary to carry out the duties imposed upon him by the federal Act.

The Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970 (Public Law 91-76) establishes the National Institute of Mental Health, the National Institute on Alcohol and Alcoholism to administer the programs and authorities assigned to the Secretary of Health, Education and Welfare by the Act. Funds are appropriated for grants to participating states. Any state desiring to participate is required to submit a State Plan which must provide, *inter alia*, that certain reports be made by such state. Title III, Part A, Section 303(a)(6) provides that the state agency will make such report in such form and containing such information as the Secretary may from time

to time reasonably require, and will keep such records and afford access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

The Client Progress and Follow-up Forms, MH-401-4, pages C-85 through C-89, and Client Intake Form, MH-401-2, pages C-63 through C-68 of the Department of Health, Education and Welfare, specify that the information entered on those forms will be handled in the strictest confidence and that no individual patient records containing information as to identity of the client will be released to any unauthorized personnel.

G.S. 122-8.1 concerns disclosure of information and reads in pertinent part as follows:

"No superintendent, physician, psychiatrist or any other officer, agent or employee of any of the institutions or hospitals under the management, control and supervision of the North Carolina State Department of Mental Health shall be *required* to disclose any information, record, report, case history or memorandum which may have been acquired, made or compiled in attending or treating an inmate or patient of said institutions or hospitals in a professional character, and which information, records, reports, case histories and memorandums were necessary in order to prescribe for or to treat said inmate or patient or to do any act for him in a professional capacity unless a court of competent jurisdiction shall issue an order compelling such disclosure:" (Emphasis added)

This Office is of the opinion that this statute is not in conflict with the federal Act. Any disclosure of information is by virtue of the State, through the Department of Mental Health, having submitted a State Plan to the federal agency involved in order to participate and receive grants for the purposes specified in the federal Act.

The Department of Mental Health and those institutions under its control, having submitted and received federal funds pursuant to

the State Plan, must now furnish necessary information as is required by the Secretary of Health, Education and Welfare in compliance with the federal legislation.

Robert Morgan, Attorney General
Parks H. Icenhour,
Assistant Attorney General

- - -

4 April 1973

Subject: Motor Vehicles; Intoxicating Liquor;
Second Offense under G.S. 20-138.

Requested by: Mr. Jack M. Freeman
Assistant Solicitor
Twenty-Ninth Solicitorial District

Question: If a person has been convicted under G.S. 20-138 of driving under the influence of intoxicating liquor while on a public highway, would a subsequent charge under G.S. 20-138 of driving under the influence of intoxicating liquor on a public vehicular area constitute a second offense punishable under G.S. 20-179(2)?

Conclusion: Yes.

G.S. 20-138, as contained in the 1971 Cumulative Supplement to Volume 1C of the North Carolina General Statutes, reads as follows:

"§20-138. *Persons under the influence of intoxicating liquor.*--It is unlawful and punishable as provided in G.S. 20-179 for any person who is under the influence of intoxicating liquor to drive or operate any vehicle upon any highway or any public vehicular area within this State."

The phrase "upon any highway or any public vehicular area" does not mean that there are two separate and distinct offenses contained in G.S. 20-138. Rather, there is one offense and the above quoted phrase serves only to establish the localities in which this offense may be committed. Thus, an individual who has been convicted of driving under the influence while operating a motor vehicle on a public street or highway and is subsequently charged with driving under the influence while operating a motor vehicle on a public vehicular area can be charged with a second offense violation of G.S. 20-138 and, if convicted, is subject to punishment pursuant to G.S. 20-179(2), which reads:

"(2) For a second conviction of any offense under G.S. 20-138, G.S. 20-139(a), or G.S. 20-139(b), by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), by imprisonment for not less than two months nor more than six months, or by both such fine and imprisonment, in the discretion of the court."

Thus, the punishment for second offense driving under the influence either on the highway or on a public vehicular area is the same.

The elements of the offense contained in G.S. 20-138 are (1) driving or operating a motor vehicle, (2) while under the influence of intoxicating liquor, (3) on either a highway or public vehicular area. Prove (1) and (2) and either locality under (3) and this will constitute a violation of G.S. 20-138.

Robert Morgan, Attorney General
Russell G. Sherrill, III, Associate
Attorney General

- - -

4 April 1973

Subject: Motor Vehicles; Transfer of Title; Affidavit
of Heirs (DMV Form 317)

Requested by: Honorable Mary Ruth Nelms
Clerk of Superior Court
Granville County

Questions:

- (1) Can an affidavit (Form 317) be used to transfer titles for mobile homes?
- (2) If the title can be transferred by affidavit, can the value of said mobile home exceed \$2,000?
- (3) Is the signing of the certificate on Form 317 by the clerk of superior court in the discretion of the clerk?

Conclusions:

- (1) Yes.
- (2) Yes, provided the provisions of G.S. 20-77(b) are met.
- (3) Yes.

As to conclusion (1), G.S. 20-38(17) provides:

"(17) *Motor Vehicle.*--Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and *every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.*" (Emphasis added)

A "mobile home" is by definition a "motor vehicle" and subject to the provisions of G.S. 20-77(b) which reads:

"(b) In the event of transfer as upon inheritance, devise or bequest, the Department shall, upon receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title

and license as otherwise provided for transfers. If a decedent dies intestate and no administrator has qualified or the clerk of superior court has not issued a certificate of assignment as part of the widow's years (sic) allowance, or if a decedent dies testate with a small estate and leaving a purported will, which, in the opinion of the clerk of superior court, does not justify the expense of probate and administration and probate and administration is not demanded by any interested party entitled by law to demand same, and provided that the purported will is filed in the public records of the office of the clerk of the superior court, the Department may upon affidavit executed by all heirs effect such transfer. The affidavit shall state the name of the decedent, date of death, that the decedent died intestate or testate and no administration is pending or expected, that all debts have been paid or that the proceeds from the transfer will be used for that purpose, the names, age and relationship of all heirs and devisees (if there be a purported will), and the name and address of the transferee of the title. A surviving spouse may execute the affidavit and transfer the interest of the decedent's minor or incompetent children where such minor or incompetent does not have a guardian. A transfer under this subparagraph shall not affect the validity nor be in prejudice of any creditor's lien."

As to conclusion (3), the clerk of superior court is not required to execute the certificate appearing on the affidavit of heirs (DMV Form 317) nor should such be executed until the clerk is satisfied that all the provisions of G.S. 20-77(b) have been met.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

5 April 1973

Subject: Infants and Incompetents; Sterilization of Minors; Jurisdiction of State Courts Over Federal Reservation

Requested by: Captain Earl R. Peters
Medical Corps, U. S. Navy
Naval Hospital

Question: When the mother and father of a mentally retarded girl under 18 years of age have consented to the performance of a sterilization operation on their daughter at the Naval Hospital, Camp Lejeune, North Carolina, is this operation authorized in the absence of an appropriate court order?

Conclusion: When the mother and father of a mentally retarded girl under 18 years of age have consented to the performance of a sterilization operation on their daughter at the Naval Hospital, Camp Lejeune, North Carolina, the performance of this operation is not authorized in the absence of an order from the District Court Division of the General Court of Justice of North Carolina.

The pertinent North Carolina General Statutes dealing with voluntary sterilization of a minor are as follows:

"§90-272. *Operation on unmarried minor.*--Any such physician or surgeon may perform a surgical interruption of vas deferens or Fallopian tubes upon any unmarried person under the age of 18 years when so requested in writing by such minor and in accordance with the conditions and requirements set forth in G.S. 90-271, provided that the juvenile court of the county wherein such minor resides, upon petition of the parent or parents, if they be living, or the guardian or next friend of such minor, shall

determine that the operation is in the best interest of such minor and shall enter an order authorizing the physician or surgeon to perform such operation.

"§90-273. *Thirty-day waiting period.*--No operation shall be performed pursuant to the provisions of this article prior to thirty (30) days from the date of consent or request therefor, or in the case of an infant, from the date of the order of the court authorizing the same, and in neither event if the consent for such operation is withdrawn prior to its commencement."

In view of the clear legal edicts set forth in these statutes, the only real question is whether these statutes levy valid prerequisites to the type of surgery desired when it is to be performed on the military installation, the patient is a dependent of a member of the military living on the military installation, and the medical personnel performing the operation presumably are members of the United States Navy or employees thereof.

In a prior opinion the Attorney General has addressed a similar question regarding the jurisdiction of the District Court Division of the General Court of Justice of North Carolina (performing the function of a juvenile court) over abused and neglected children within the confines of Camp Lejeune. See opinion of the Attorney General to Lieutenant Colonel R. W. Edwards, 41 N.C.A.G. 580 (1971).

This opinion explicitly recognized that the federal government has acquired exclusive jurisdiction--save service of process--over virtually all of Camp Lejeune. Nevertheless, the following factors were deemed vital in consideration of the problem considered there, and are equally applicable here:

(a) The particular field involved is one clearly falling within the police powers of the State and outside the jurisdiction of the federal government so that the latter government is incapable of accepting jurisdiction thereof.

(b) Absent State jurisdiction over this matter, we would be confronted with a crucial area having no developed legal

system for the protection of private rights.

(c) Prior to the transfer of jurisdiction to the federal government, the State had statutory provisions in this general area of the law, albeit different from the present statutes.

Therefore, the following language from the prior opinion of the Attorney General is equally apropos here:

"In view of the inability of the federal government to accept or exercise jurisdiction . . . , the State of North Carolina was never actually divested of jurisdiction

"The current North Carolina statutes governing the processing of cases . . . were adopted subsequent to the assumption of jurisdiction over the situs of Camp Lejeune by the United States; nevertheless, they are the outgrowth of statutes dealing with the same general subject which existed prior to and at the time of the transfer of jurisdiction of the Camp Lejeune situs to the federal government. Inasmuch as they fill what would otherwise be a void, these State statutes obviously do not interfere with the exclusivity of jurisdiction as exercised by the United States in all other matters" (Op. cited at page 582).

Thus, it appears that the statutory provisions of G.S. 90-272 and G.S. 90-273 levy valid requirements on the problems on the performance of the type of operation desired notwithstanding the locale of the operation and the status of the patient and personnel performing it.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

10 April 1973

Subject: Social Services; Transportation; Volunteers;
Contracts; Tort Liability

Requested by: Mr. Herbert T. Mullen, Jr.
White, Hall and Mullen
County Attorneys
Pasquotank County

Question: May a county social services recipient accepting free transportation from a volunteer to food centers or medical services provided by a county department of social services execute a release absolving both the volunteer and the county department of social services from tort liability?

Conclusion: A county social services recipient may by contract release both a volunteer providing free transportation to food centers or medical services provided by a county department from tort liability which may arise as a result of such operation.

A provision in a contract seeking to relieve a party to the contract from liability for his own negligence may or may not be enforceable depending upon the nature, the subject matter of the contract, the relation of the parties, and the presence or absence of equality of bargaining power and attendant circumstances. Under our system of government, freedom to contract is fundamental and the basic right of every citizen. However, the public interest is paramount and if a contractual provision is violative of law or contrary to some rule of public policy, it is void and unenforceable, *Insurance Association v. Parker*, 234 N.C. 20, 265 S.E. 2d 341 (1951), but such contracts are not favored by the law, and are to be strictly construed against exemption from liability. A party may not exempt himself from liability in the performance of a duty owed the public or involving the public interest, or where the public interest requires the performance of a private duty. See 2 Strong, *N.C. Index 2d*, Contracts, §10, page 309.

An exculpatory clause is valid where the contract is casual and private and in no way connected with public service. *Gibbs v. Light Company*, 265 N.C. 459, 144 S.E. 2d 393 (1965). Where an individual enters into a contract for his own convenience, an agreement barring the other party's liability for negligence is not against public policy since the public has no interest in such contracts. *Shingleton v. Atlantic Coast Line Railroad Company*, 203 N.C. 462, 166 S.E. 305 (1932).

Governmental immunity affords a defense to a county except to the extent that it is waived by the procurement of liability insurance. G.S. 153-9(44). Even in the absence of such immunity, a county department of social services would incur no liability by merely setting up food centers and procuring physicians to serve social service recipients.

While there is no case squarely on point, the foregoing authority leads us to the conclusion that one accepting free transportation from a volunteer to accomplish his own purposes may release from tort liability both such volunteer and the county department of social services.

Robert Morgan, Attorney General
Parks H. Icenhour,
Assistant Attorney General

- - -

10 April 1973

Subject: Mental Health; Infants and Incompetents;
Voluntary Admission of Minors to State
Hospitals Upon Parents' Request;
Involuntary Return of Residents to Centers
for Mentally Retarded

Requested by: Mr. R. Patterson Webb
General Business Manager
Department of Mental Health

Questions:

(1) Can a minor under 18 years of age be admitted to one of the North Carolina Mental Health facilities on a voluntary admission request signed by his parents over the minor's objection?

(2) Can the superintendent of a North Carolina Center for mentally retarded cause the involuntary return to the center of a resident who leaves the center without permission but who is over 18 years of age, was a non-committed resident, and has not been judicially declared to be incompetent?

Conclusions:

(1) A minor under 18 years of age can be admitted to one of the North Carolina Mental Health facilities on a voluntary admission request signed by his parents over the minor's objection.

(2) The superintendent of a North Carolina center for mentally retarded cannot cause the involuntary return to the center of a resident who leaves the center without permission but who is over 18 years of age, was a non-committed resident and has not been judicially declared to be incompetent.

Turning to the first conclusion, it must be recognized that the question posed refers to all facilities of the Department of Mental Health, despite the fact that there are separate statutes dealing with the mental hospitals and the centers for mentally retarded. G.S. 122-56, which contains the provisions relative to the mental hospitals, states that "any person" can voluntarily admit himself by requesting admission, by submitting proper medical documentation, and by securing approval of the superintendent of the hospital involved. The language of G.S. 122-70, in prescribing the rules for the centers for mentally retarded, specifically provides that application may be made by the parent, parents, or guardian as the case may be.

The present query apparently is based upon concern over "children's rights" and uncertainty on the part of supervisory personnel as to whether admission to the facilities involved based on the signatures of the responsible adults might amount to an infringement on the constitutional rights of the minor involved.

This Office has previously expressed the opinion that, in the absence of emancipation, the legal age for consent for voluntary hospitalization is the age of majority, i.e., 18 years. See opinion of the Attorney General to Miss Lena S. Davis, 41 N.C.A.G. 489 (1971). The General Assembly of this State has pinpointed certain areas (such as situations involving venereal disease) wherein the consent of the minor/patient for medical treatment and services is appropriate and has enacted legislation relative thereto. Admission to mental health facilities is not included therein. Conversely, various statutory enactments levy requirements on parents or guardians to safeguard the welfare and health of minors under their charge, with criminal prosecution or loss of custody of the child involved being the penalty or penalties to be paid by those who fail to fulfill these responsibilities.

This State follows the general common law rule that parents have the natural and legal right to the custody, companionship, control and bringing up of their infant children, with this right not to be lightly interfered with. *Spitzer v. Lewark*, 259 N.C. 50, 53-54 (1963). Further, the law presumes that parents will perform their obligations to their children. *In Re Hughes*, 254 N.C. 434, 436 (1961). As to any claim that the conclusion arrived at here results in an unconstitutional denial to the minors involved of due process and equal protection of the laws, the following language of the North Carolina Court of Appeals is appropriate:

"The familial relationship has long been recognized as an appropriate and reasonable basis for imposing special rights, obligations and immunities." See *Evans v. Evans*, 12 N.C. App. 17, 19 (1971).

Inasmuch as the second question posed addresses only residents of the centers for mentally retarded, the governing statute is G.S. 122-71.1, which provides as follows:

"§122-71.1 *Discharge of patients.* Any person admitted to a center may be discharged therefrom or returned to his or her parents or guardian when requested by the parents or the guardian or when, in the judgment of the State Department of Mental Health, it will not be beneficial to such person or to the best interest of the center that such person be retained longer therein."

In the same opinion previously cited the Attorney General had occasion to discuss discharge of patients from the centers for mentally retarded and his reasoning was that:

"Since a person 18 years old or older is now an adult, he may be discharged upon his sole request if concurred in by the State Department of Mental Health in accordance with the statute."

The situation as described in question number two deals with an individual who was voluntarily placed in one of the centers for mentally retarded. Inasmuch as he has not been judicially declared to be incompetent, it must be presumed that he is competent to decide whether he desires to remain in the center or to depart therefrom. G.S. 122-71.1 speaks of a discharge when, in the judgment of the Department, it will not be beneficial to the person or to the best interest of the center that the person be retained there. However, it would appear that this provision was designed to enable involuntary discharge of a patient when the State Department of Mental Health determines such to be in order. It does not appear to engraft any absolute requirement that the State Department approve of or concur in the decision to leave the center when the resident making the decision possesses the qualifications set forth in question number two. Inasmuch as this is a decision which may be made solely by that resident, the superintendent or other hospital authorities have no authority to involuntarily return the resident to the center.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

16 April 1973

Subject: Infants and Incompetents; Minors;
Hazardous Occupations Prohibited; G.S.
110-7

Requested by: Honorable W. C. Creel
Commissioner of Labor

Question: May a minor under eighteen years of age
work in an establishment that has a
"brown-bagging" license but does not sell
or serve beer, wine or any alcoholic
beverage?

Conclusion: G.S. 110-7 precludes a minor from working
on or about an establishment that has a
"brown-bagging" license.

G.S. 110-7 states in part:

*"Hazardous occupations prohibited for minors under
eighteen. . . . Nor shall any minor under eighteen be
employed or permitted to work in, about or in
connection with any establishment where alcoholic
liquors are distilled, rectified, compounded, brewed,
manufactured, bottled, sold, or dispensed,"*

The intent of this statute was clearly to prevent minors from working
in or about any establishment where alcoholic beverages were being
produced, sold or consumed. The fact that an establishment may
not directly sell or dispense any alcoholic beverage but that such
establishment has obtained a license under G.S. 18A-31, which
allows the consumption of alcoholic beverages on its premises, is
not sufficiently distinguishable from the intent of G.S. 110-7 so
as to allow minors to be employed in or about such establishments.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

16 April 1973

Subject: Infants and Incompetents; Child Day-Care Facilities; Size of Groups; Child-Staff Ratio; G.S. 110-91

Requested by: Mrs. Karen James
Licensing Consultant
Office of Child Day Care Licensing

Question: May a child day-care facility licensed under Article 7, Chapter 110 of the General Statutes of North Carolina, care for more children than the number for which it is licensed?

Conclusion: A child day-care facility may care for 20 percent more children than it has been licensed to care for, provided proper child-staff ratio is maintained.

G.S. 110-91(7)c. states:

"To provide for absenteeism and withdrawals without notice, a twenty percent (20%) tolerance shall be allowed as to groups and numbers of children specified in this section and as to the total number for which the facility is licensed, except that no more than 25 children shall be attended by one staff member."

The clear meaning of this language is that a day-care facility may properly care for 20 percent more children than the number of children for which it is licensed. Thus, if a facility is licensed to care for 25 children, it may actually care for 30 children and still be operating within the limits set by the law.

This 20 percent tolerance will also apply to the size of groups permitted by the law, provided the proper child-staff ratio is maintained.

G.S. 110-91(2) provides:

". . . No day-care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group."

It would seem then that, although the law states that one group of children in a facility should consist of no more than 25 children, the tolerance would increase this number to 30 so that one group of children in a facility could actually consist of 30 children. If this is the case, however, the facility must provide an additional staff member to attend the children. This is because, although the law allows a 20 percent tolerance in determining the allowable size of the group of children, it does not extend this 20 percent tolerance to the number of staff members who must be in attendance. Thus, if a group of children in a facility consists of 26 children, there must be two staff members in attendance.

Robert Morgan, Attorney General
Miss Ann Reed,
Associate Attorney

- - -

17 April 1973

Subject: Social Services; Education; Contracts;
Employee Liability Under Education and
Leave Grant Program

Requested by: Dr. Renee Westcott
Commissioner
North Carolina Department of Social
Services

Question: When a State employee has participated in
the Educational Leave and Grant Program,
does termination of his employment solely
due to abolishment of his position remove

the employee's obligation to effect repayment of the grant in lieu of performing the unfulfilled work requirements agreed to as a prerequisite to obtaining the grant?

Conclusion:

When a State employee has participated in the Educational Leave and Grant Program, termination of his employment solely due to the abolishment of his position removes the employee's obligation to effect a repayment of the grant in lieu of performing the unfulfilled work requirements agreed to as a prerequisite to obtaining the grant.

The Educational and Leave Grant Program involved apparently is designed to enable selected employee applicants to receive public monies in order to attend graduate schools. As a necessary concomitant to receiving the monetary grant, the applicant is required to sign a note and an agreement. The note is a demand type instrument, is payable to the North Carolina Department of Social Services, and incorporates by reference the educational grant agreement. In pertinent part, the note provides:

"If the maker of this note complies with the terms of the Educational Grant Agreement for employment in the North Carolina social services program, the specified credit for such services will be given on this note. If for reasons accepted by the State Department of Social Services, the maker of the note does not complete a sufficient period of employment to cancel this note, the entire amount remaining to be paid (or canceled by employment in the North Carolina social services program) shall become due and payable immediately prior to termination of employment in the North Carolina social services program."

The Educational Grant Agreement, which is entered into between the applicant and the Commissioner, North Carolina Department of Social Services, contains routine provisions that the Department will

pay the grant in the appropriate amount and installments to the applicant and that the latter will study at the selected school for the specified number of quarters or semesters. It also contains the applicant's promise that, upon completion thereof, he will work in the social services program in North Carolina for a specified period of time. The following additional explanatory provisions would seem to clearly define the applicant's options and responsibilities:

- "7. That _____ (Name) further agrees that if, for reasons of health or because of moving from the State or for any necessary reason, personal or otherwise, (he or she) is not able to work the specified number of months in the social services program in North Carolina, (he or she) will return the full amount of the grant to the State Department of Social Services in accordance with the terms of the note of even date attached herewith in the amount of \$ _____ and executed by (him or her) .
8. That it is further understood and agreed that if _____ (Name) completes _____ months of satisfactory service in the social services program of North Carolina immediately succeeding the termination of the course of instruction to which this grant is applied, then and in that event the obligation to repay the amount of this grant shall be discharged and the note of even date herewith executed shall be canceled and returned to the maker."

In the normal course of events, it would appear that the provisions of the note and educational grant agreement fully delineate the rights and obligations of parties thereto. However, it appears that a new element has been interjected into the situation by virtue of a proposed reduction in forces which is expected to occur in June of 1973. This reduction in forces will result in the abolishment of several positions in the North Carolina Department of Social Services, with the possibility that employees who have received and

are paying back educational grants by employment with the State or local departments of social services may be incumbents of these abolished positions. Thus, since an employee in this situation is incapable of working the specified number of months required for satisfaction of the grant, the question has arisen as to his monetary liability to repay the grant under the terms of the agreement and contract.

It is a basic precept of contractual law that parties to an executory contract for the performance of some act or service in the future impliedly promise not to do anything to the prejudice of the other inconsistent with their contractual relations. *Tillis v. Calvine Cotton Mills, Inc.*, 251 N.C. 359 (1959). A party who has prevented the performance of a condition of a contract or who, by his own acts, makes it impossible for the other party to perform a contractual obligation may not take advantage of the non-performance and insist on complete performance by the other party when that party has tendered substantial performance insofar as it is within his capability. *Commercial National Bank v. Charlotte Supply Co.*, 226 N.C. 416 (1946).

The rationale which should be applied to this problem should be somewhat akin to the frustration of purpose doctrine which has been enunciated as follows by the North Carolina Supreme Court:

"Where parties contract with reference to specific property and the obligations assumed clearly contemplate its continued existence, if the property is accidentally lost or destroyed by fire or otherwise, rendering performance impossible, the parties are relieved from further obligations concerning it"
Sechrest v. Forest Furniture Co., 264 N.C. 216, at page 217 (1965).

While this frustration doctrine as so pronounced dealt specifically with tangible property, the same general principles should apply where the performance of work is the ultimate end envisioned at time of entering into the agreement and note. It must be reiterated, of course, that this opinion purports to deal only with the situation where the applicant is willing and available to perform the work described in the original agreement but is precluded from doing so

solely because the position involved has been abolished by the other party to the contract. It is not intended to deal with a situation where the individual concerned is given the opportunity to continue employment with the State or a local department in a similar position to the one being abolished but elects not to do so.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

26 April 1973

Subject: Infants and Incompetents; Child-Caring
Facilities; Permits and Licenses; Operation
of a Home for Teen-Aged Girls

Requested by: Dr. Renee Westcott
Commissioner
Department of Social Services

Question: Should a youth center which operates as
a private nonprofit organization providing
residential care for girls between the ages
of 16 and 23 who have been referred there
because of drugs, broken homes, or other
social problems be permitted to operate
without first having obtained a permit and
a license from the State Board of Social
Services in accordance with G.S. 110-49?

Conclusion: A nonprofit organization which provides
residential care for girls between the ages
of 16 and 23 who have been referred there
because of drugs, broken homes, or other
social problems is not a child-caring facility
within the meaning of G.S. 110-49, and,
therefore, is not required to obtain a
permit and a license from the State Board
of Social Services.

G.S. 110-49 provides:

"No individual, agency, voluntary association or corporation seeking to establish and carry on any kind of business or organization in this State for the purpose of giving full-time care to children or for the purpose of placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the State Board of Social Services. The said Board shall issue such permit recommending said business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

"Upon establishment as provided above, every such organization, except those exempted in G.S. 108-78(c) shall annually procure a license from the State Board of Public Welfare, and it shall be unlawful to carry on said work or business without having such license.

"Any individual corporation, institution, or association violating any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment."

G.S. 108-78(c) provides:

"This section shall not apply to any child-caring institution chartered by the laws of the State of North Carolina (or operating under charters of other states which have complied with the corporation laws of North Carolina) which has a plant and assets worth sixty thousand dollars (\$60,000.00) or more and which is owned or operated by a religious denomination or fraternal order."

The Tenth Amendment to the United States Constitution reserves to the individual states, within limitations, the police power. In exercising the police power, the states may enact laws, within constitutional limits, protecting or promoting the health, safety, morals, or order and general welfare of the public. *Raleigh v. Norfolk Southern Railway Co.*, 275 N.C. 454, 168 S.E. 2d 389 (1969). However, arbitrary or unnecessary restrictions upon lawful activities are not within the police power. For this reason, statutes enacted in the exercise of the police power must be strictly construed so that there will be no more interference with personal liberty than is necessary to protect the welfare of the public.

Therefore, to determine whether or not a facility such as the one involved here should be required to obtain a permit and a license, it is necessary to examine the nature of the facility in light of the language of this and other relevant statutes.

The word "children" is not defined in this or any other statute in terms of an age limitation. A number of other statutes do, however, set age limitations. G.S. 48A-1 abrogates the common law definition of "minor" and G.S. 48A-2 defines "minor" as "any person who has not reached the age of 18 years." G.S. 51-2 provides that "persons over 16 years of age and under 18 years of age may marry . . ." with the consent of their parents, and G.S. 14-318.2 makes it a misdemeanor for a parent or person providing care to inflict physical injury on a child less than 16 years of age. The terms "full-time care to children" or "placing children" are not defined by the statutes.

The facility involved here proposes to provide residence for eight girls ranging in age from 16 to 23 years, most of whom are emancipated from their parents and are delinquent, ex-drug offenders, or in some way in conflict with society. In some cases the parents of unemancipated girls between the ages of 16 and 18 years will refer their daughters to this facility. The program offered by the facility will be one of religious emphasis, with the possibility of school attendance or job training after several months of residency. The average length of stay for the girls will be six to eight months.

The important consideration here is the fact that the facility involved

will not care for young children who need protection from unsatisfactory environmental conditions. Instead, it will provide residence and guidance for girls at least 16 years old who are either emancipated or who are there at their parents' request. Strictly construing G.S. 110-49 together with other relevant statutes, it would appear that the Legislature did not intend that a facility such as this should be considered a business established for the purpose of giving full-time care to children. Therefore, this facility is not required to obtain a permit and a license from the State Board of Social Services before it can begin operation.

Robert Morgan, Attorney General
Miss Ann Reed,
Associate Attorney

- - -

26 April 1973

Subject: Public Records; Inspection of the Records of a County or City Board of Education; Records Subject to Inspection; Persons Who Have the Right to Examine and Inspect the Records of a County or City Board of Education; Copies of Records of a County or City Board of Education, Including Certified Copies; Fees to be Charged for Furnishing Certified Copies of These Records

Requested by: Mr. Donald P. Brock
Attorney for Jones County Board of Education

Questions: (1) Are the records of a county or city board of education subject to G.S. 132-1 which defines public records?

(2) If these are public records, do they include the minutes of the various boards

of education, policies, teacher contracts, payroll records and income tax forms?

(3) Under the provisions of G.S. 132-6, does any person have the right to examine and inspect the records of county and city boards of education, and to what extent would the superintendent of schools be required to furnish certified copies of these records and what are the fees prescribed by law for furnishing copies of said records?

(4) Is it required that copies of records furnished by a county or city board of education be certified or may a person or persons copy the records and release the same without certification?

Conclusions:

The records of county and city boards of education are public records within the statutory definition of G.S. 132-1. Public records would include such records as minutes, board policies reduced to writing, teacher contracts, payroll records, but would not include income tax forms, as these are privileged records under both federal and State law. It would appear that under the provisions of G.S. 132-6 any person may inspect these public records as the statute does not provide any conditions of eligibility of the person making the inspection. It is not prohibited by statute that copies of public records be made without certification, and it is not mandatory that all such records must be certified. The statute does not prescribe any fees for furnishing copies of these records but the county and city boards of education are authorized to fix the fees charged for copies of these school records.

The fee should be related to the cost of reproduction of the records by machine or photostatic processes, or the person desiring the record may make a copy with his own secretarial or stenographic assistance under the supervision of the superintendent of schools.

Before answering the specific questions in the letter of inquiry, we give certain provisions of Chapter 132 of the General Statutes dealing with public records. Public records under G.S. 132-1 are defined as follows:

"Public records comprise all written or printed books, papers, letters, documents and maps made and received in pursuance of law by the public offices of the State and its counties, municipalities and other subdivisions of government in the transaction of public business."

Under G.S. 132-2 it is provided as follows:

"The public official in charge of an office having public records shall be the custodian thereof."

G.S. 132-6 deals with the inspection and examination of public records and is as follows:

"Every person having custody of public records shall permit them to be inspected and examined at reasonable times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law."

It is thought that G.S. 132-7 refers to records that are renovated and restored or the situation where a public record is completely re-copied, and then the custodian of the record certifies as to its accuracy, and the copied record then becomes the equivalent of the original record. It is not thought that this refers to excerpts or portions of a public record that is copied as a result of an examination or inspection.

The legal textwriters have considered the right of examining and inspecting public records to some extent. In 66 Am. Jur. 2d (Records and Recording Law), pp. 349, 350, 351, Secs. 12, 13, 14, we find the following:

" § 12. *Generally.*

"Good public policy is said to require liberality in the right to examine public records. Thus, where there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. In jurisdictions where the right to inspect public records extends only to those who show some special interest in them, such interest must generally be alleged and proved. But some jurisdictions hold that there is an absolute right to inspect a public document in the absence of specifically stated sufficient reasons to the contrary. Another approach is that the common-law right to inspect public records is not absolute, but is to be determined by whether permitting inspection would result in harm to the public interest which outweighs the benefit; but that public policy favors the right of inspection of public records and documents and it is only in the exceptional case that inspection should be denied. However, where there is an express or implied legislative intent that certain records be open to public inspection, the right is absolute and the custodian has no authority to deny inspection.

" § 13. *Right to copy or photocopy; use of experts.*

"The right to inspect public records commonly carries with it the right to make copies, without which the right to inspect would be practically valueless. Thus, a statute providing that certain records shall be open to inspection of any person during reasonable business hours is construed as granting a reasonable right to copy the records as well as to examine them. The right to inspect may also include the right to photograph the records, as a modern method of copying them

accurately, harmlessly, noiselessly, and rapidly, the right to reproduce, copy, and photograph public records being an incident to the common-law right to inspect and use them. One court, while recognizing that the right to inspect and hand-copy includes the right to photocopies, has held that this right can best be obtained by requiring the proper official to furnish photocopies at reasonable cost, rather than by permitting the applicant to make a copy with his own machine. A statutory right of access to records usually includes reasonable opportunity for the assistance of experts and other persons, as well as the opportunity to make copies.

"Where voter registration records, which are themselves open to the public, have been converted into a reproducible form on a magnetic tape, which is also a public record, it has been held that the county chairman of a political party is entitled to a copy of the tape.

" §14. *Conditions and restrictions; fees.*

"The right of inspection is subject to reasonable rules and regulations as to when, where, and how the inspection may be made, in order to guard against loss or destruction of records, and to avoid unreasonable disruption of the functioning of the office in which they are maintained.

"Even in the absence of any specific restrictions, the right implies that those exercising it shall not take possession of the registry or monopolize the record books so as unduly to interfere with the work of the office or with the exercise of the right by others, and that they shall submit to such reasonable supervision on the part of the custodian as will guard the safety of the records and secure equal opportunity for all. Subject to these limitations, however, those records which are in the custody of public officials and which have been designated public records by law are

generally open to anyone at appropriate times.

"Where custodians are required to furnish copies of records in their offices, there is no duty to make the copies unless there has been a proper demand and a tender of the fees provided by statute for the performance of the duty. It is in general held, however, in the absence of statutory provisions to the contrary, that any person or corporation has a right to inspect and make abstracts of public records without the payment of any fee to the custodian. And it has been held that statutory provisions for fees to be charged by the custodian when he renders a service in furnishing information contained in his records do not preclude a member of the public from making a personal examination of such records without paying such fees."

In 76 C.J.S. (Records), p. 135, Sec. 35B, we quote some excerpts that we regard as pertinent, as follows:

"Under some statutes it has been held that every person has a right to inspect public records, whether or not he has any immediate interest in such records, that neither a present nor a prospective interest in the record is necessary in order to entitle a person to inspection, and that his motive in making the inspection may not be inquired into. Under other statutes it has been held that inspection is authorized by interested persons or persons having an interest in the public records sought to be examined, and that there is no right of inspection where no legal purpose or interest appears, and that there is no right to use such records for purely speculative purposes or merely to gratify idle curiosity. * * * A state has the power to grant by statute the right of inspection of public records of all persons, regardless of interest or as to particular records * * *. Some statutes expressly recognize the right to make copies of public records, and the right to copy has been held a necessary incident of the right to inspect granted by statute.

* * * The right to make copies may not be exercised so as to harass or hamper the recording officer in the performance of his duties, or interfere unduly with the equal right of others, or materially lessen the compensation of the custodian, although as to the latter there is also authority to the contrary. Where a person entitled thereto applies to make copies of public records it has been held that it is the duty of the officer in charge to make provision for this to be done in such manner as will accommodate the applicant and at the same time safeguard the records."

A reading of our statutes, especially G.S. 132-6, seems to make public records, and the inspection and examination thereof, available "by any person". And, as we have cited above, the right to inspect includes the right to make copies. The definition of public records as defined in G.S. 132-1 in our opinion would include all official records such as minutes, board policies where reduced to writing, teacher contracts, and payroll records. It would not include income tax forms as such documents are private documents of the person paying the income tax; these records are privileged and not subject to inspection except in certain cases by prosecuting officers and other public officers and agencies. As to the North Carolina privilege, see G.S. 105-259 and G.S. 75-28. The privilege as to income tax forms under the federal law will be found in United States Code Annotated, Volume 26. It also should be called to attention that the investigation papers compiled by school counselors would be privileged records under G.S. 8-53.4.

As we have already stated, the person making the inspection may copy excerpts or make complete copies with his own clerical assistants or he may ask for certified copies by paying the fees established by the boards of education of the counties and cities. These fees should be reasonable and should be related to the cost of reproduction by machines or photographic processes. As we have stated above, any person under our statute may demand inspection even if his motives are based upon mere speculation or idle curiosity but such inspections must not delay or hinder the work of the office.

Perhaps the nature of our statute on public records should suggest to public officers that there should be some clarifying amendments

made to same. There does not appear to be any case law in the State on the subject, and the rulings of this Office will be found in the Attorney General's Reports, as for example, Volume 40, at p. 636, where it was ruled, as follows:

"Chapter 132 of the General Statutes, entitled 'Public Records', defines public records and requires the custodian to permit inspection of them by members of the public.

"Although a person has the right to examine the public records at reasonable times and under the supervision of the custodian, the statute does not require the custodian to compile specific information and furnish it to the requesting person. The custodian shall make all public records available at reasonable times for inspection and examination, and he may furnish copies upon payment of the proper fee. Public records would embrace salaries, wages, job costs, correspondence and files in general which were made or received in the transaction of public business."

Robert Morgan, Attorney General
Andrew A. Vanore, Jr.,
Deputy Attorney General

- - -

26 April 1973

Subject: Taxation; Corporation Franchise Tax;
Deduction; Real Estate Investment Trust;
Evidences of Debt; G.S. 105-125

Requested by: Mr. W. B. Matthews, Director
Corporate Income and Franchise Tax
Division
North Carolina Department of Revenue

Question: Is a real estate investment trust entitled to

a deduction under G.S. 105-125 for the market value of an evidence of debt when the borrower creating the evidence of debt is an individual, a partnership or an entity other than a corporation?

Conclusion:

A real estate investment trust is not entitled to a deduction under G.S. 105-125 for the market value of an evidence of debt when the borrower creating the evidence of debt is an individual, a partnership or an entity other than a corporation.

The third paragraph of G.S. 105-125 clearly states " . . . that any corporation . . . which . . . qualifies . . . as a 'real estate investment trust' . . . shall in determining its basis for franchise tax be allowed to deduct the aggregate market value of its investments in the *stocks, bonds, debentures, or other securities or evidences of debt of other corporations, municipalities, governmental agencies or governments.*" (Emphasis added.)

It does not state that the corporation may deduct the value of an evidence of debt created by any entity other than those named and we do not believe that this statute can be construed to include an individual, a partnership or an entity other than a corporation which is not specifically named in it.

Statutory provisions permitting exemption from tax liability should be so construed as to bring within the exemption only those clearly entitled to its provisions. *Good Will Distributors v. Shaw*, 247 N.C. 157, 100 S.E. 2d 334 (1957).

Deductions are granted as a matter of legislative grace. The Legislature is given the widest latitude in making the distinctions which are bases for classification, and they will not be disturbed unless they are capricious, arbitrary and unjustified by reason. *Rigby v. Clayton*, 274 N.C. 465, 164 S.E. 2d 7 (1968).

A taxpayer who challenges an exemption or exclusion has the burden of showing that he comes within the exemption upon which he relies. Exemptions from taxes must be strictly construed in favor

of the taxing power. *Chemical Corporation v. Johnson*, 257 N.C. 666, 127 S.E. 2d 262 (1962).

In construing and interpreting the language of a statute, we must be guided by the primary rule of construction that the intent of the Legislature controls. Where the language of a statute is clear and unambiguous, its plan and definite meaning controls. *Pipeline Co. v. Clayton*, 275 N.C. 215, 166 S.E. 2d 671 (1969).

Deductions are strictly construed against the taxpayer in favor of the State. A tax exempting statute will be strictly construed against him who claims to be exempt under it. *American Bridge Co. v. Smith*, 179 S.W. 2d (1944).

It should be further observed that a grant of exemption from taxation is never presumed, and statutes relating to exemptions should be strictly construed, and where a doubt arises, it should be resolved against the exemption. *Lewiston Orchards v. Gilmore*, 23 P. 2d 720 (1933).

It is well settled that since an exemption exists only by virtue of statutory provisions, it must be created or conferred in clear and plain language and cannot be made out by inference or implication. *Herndon v. West*, 393 P. 2d 35 (1964).

Therefore, since the statute clearly and precisely states the rules for qualification in order to obtain the deduction, it cannot be inferred that it confers anything further than stated in the text of the statute itself and there is nothing in the language that gives any indication that an expanded meaning should be imposed.

To summarize, we are of the opinion that a real estate investment trust is not entitled to a deduction under G.S. 105-125 for the market value of an evidence of debt where the borrower creating the evidence of debt is an individual, a partnership or an entity other than a corporation.

Robert Morgan, Attorney General
Norman L. Sloan,
Associate Attorney

26 April 1973

Subject: Education; Colleges and Universities; Board of Governors; Constituent Institution; Eligibility for Membership on Board of Governors

Requested by: Honorable William Friday
President
University of North Carolina at Chapel Hill

Question: Are school teachers, school principals, school superintendents and other school officials eligible to serve on the Board of Governors of the constituent institutions of the University of North Carolina?

Conclusion: School teachers, school principals, school superintendents and other school officials are not officers or employees of the State within the meaning of G.S. 116-7 and are eligible to serve as members of the Board of Governors of the University of North Carolina.

G.S. 116-7 states in pertinent part:

"From and after July 1, 1973, no member of the General Assembly or officer or employee of the State or of any constituent institution or spouse of any such member, officer or employee may be a member of the Board of Governors. Any member of the Board of Governors who is elected or appointed to the General Assembly or who becomes an officer or employee of the State or of any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes such officer or employee shall be deemed thereupon to resign from his membership on the Board of Governors."

The words "any constituent institution", as referred to in G.S.

116-7, refer to G.S. 116-4, which names the constituent institutions of the University of North Carolina. There is no reason to name all of these institutions as they begin with the University of North Carolina at Chapel Hill and run the whole gamut until we arrive at Winston-Salem State University. The persons about whom you inquire are not employees, therefore, of constituent institutions. The remaining question is whether or not they are State employees. The employees of the State named in the statute, including members of the General Assembly, or the spouse of any such person, may not be a member of the Board of Governors.

We are of the opinion that the term "employee of the State" means a direct employee such as is employed in the primary State agencies or State departments and whose central offices are here in Raleigh. It is true that boards of education of counties and cities, boards of county commissioners, boards of aldermen, or other governing authorities of municipalities are subdivisions of State government, but the statute which you quote (G.S. 116-7) does not deal with subdivisions but with employees of primary State departments as we have described above.

We conclude, therefore, that school teachers, school principals, school superintendents and other school officials are not officers and employees of the State within contemplation of the statute you quote, and such persons are eligible to serve on the Board of Governors of the University of North Carolina.

Robert Morgan, Attorney General
Andrew A. Vanore, Jr.,
Deputy Attorney General

- - -

30 April 1973

Subject: Mental Health; Public Drunkenness;
Juvenile Delinquency; Commitment to
State Hospital; Commitments Pursuant to
G.S. 122-83, G.S. 122-84, and G.S. 122-91

Requested by:

C. Capers Smith, M.D.
Superintendent
Broughton Hospital

Questions:

(1) May a district court judge, upon finding that a delinquent juvenile should be given psychiatric examination and treatment, commit the juvenile to a State hospital for such treatment?

(2) May a district court judge, upon finding a defendant not guilty of the offense of public drunkenness by reason of chronic alcoholism, commit the defendant to a State hospital for treatment of alcoholism?

(3) May Broughton Hospital accept mentally ill persons committed pursuant to G.S. 122-83, G.S. 122-84 and G.S. 122-91?

Conclusions:

(1) A district court judge, upon finding that a delinquent juvenile should be given psychiatric examination and treatment, may commit the juvenile to the appropriate State facility.

(2) A district court judge, upon a finding of not guilty of the offense of public drunkenness by reason of chronic alcoholism, may order the institution of proceedings under Article 7 of Chapter 122 of the General Statutes which may result in hospitalization of the defendant; the court may not commit directly to the hospital.

(3) Broughton Hospital may be required to accept persons committed pursuant to G.S. 122-91; it may not be required to accept persons committed under G.S.

(1) G.S. 7A-286 concerns the disposition of delinquent, undisciplined, dependent or neglected juveniles and sets forth certain methods for disposition which are available to the judge of any court exercising juvenile jurisdiction. In subsection (6) the court is authorized to order that the child be examined by a physician, psychiatrist, psychologist or other professional person to determine the needs of the child. This section reads in pertinent part:

"If the court finds the child to be in need of evaluation for mental disorder, mental retardation, or other mental impairment, the court may order the area mental health director or local mental health director to arrange an interdisciplinary evaluation of the child and make recommendations to the court. If such evaluation shows the child to be in need of residential care and treatment for mental impairment, the court may cause the mental health director to arrange admission or commit the child to the appropriate state or local facility."

It follows that the court, upon a finding that a child is delinquent and in need of residential care and treatment for mental impairment, is authorized to commit the child to the appropriate State facility.

(2) G.S. 14-335(c) provides:

"Chronic alcoholism shall be an affirmative defense to the charge of public drunkenness. For the purpose of this section, chronic alcoholism shall be as defined in Article 7A of Chapter 122. When the defense of chronic alcoholism is shown to the satisfaction of the trier of fact, and a judgment of not guilty by reason of chronic alcoholism is entered, the court may follow the treatment procedures outlined in Article 7A of Chapter 122."

G.S. 122-65.7 provides in pertinent part as follows:

"(a) Any court before which a person is acquitted

of public drunkenness by reason of chronic alcoholism may retain jurisdiction over such person for purposes of treatment. Upon such acquittal the presiding judge may then take the action authorized by this article"

G.S. 122-65.8, entitled "Procedures for treatment", authorizes any court having jurisdiction over a chronic alcoholic pursuant to G.S. 122-65.7 to take any one of several courses among which are the following:

"(1) Enter an order for the clerk of the superior court to commence the judicial hospitalization procedures in Article 7 of this Chapter; . . .

* * *

"(5) Make or approve any other plan or arrangement which may be appropriate for the treatment of the chronic alcoholic . . . Provided that no person acquitted of public drunkenness by reason of chronic alcoholism shall be committed to any facility of the Department of Mental Health by the court having jurisdiction over him in any manner other than pursuant to the procedure as provided in subdivision (1) above."

The procedures to be followed are clearly and succinctly spelled out. Under appropriate circumstances, the court may enter an order directing the clerk to commence judicial hospitalization procedures which may result in the commitment to a State hospital under the provisions of Article 7 of Chapter 122 of the General Statutes. The court may not commit such defendant directly to a State hospital for treatment. It follows that the hospital may decline to accept such person attempted to be committed in this manner.

(3) G.S. 122-83 provides that all persons who commit crimes who are mentally ill, or who, being charged with crime, are adjudged to be mentally ill at the time of their arraignment and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court to Dorothea Dix or to Cherry Hospital.

G.S. 122-84 concerns persons accused of serious crimes who have escaped indictment or have been acquitted upon grounds of mental illness or have been found by the court to be without mental capacity to undertake their defense or receive sentence after conviction. Upon compliance with the conditions specified therein, such persons are to be committed to the hospital designated in G.S. 122-83. Only Dorothea Dix and Cherry Hospitals are specified in this statute. Broughton Hospital may not be required to accept a person committed pursuant to either G.S. 122-83 or G.S. 122-84. G.S. 122-91 provides for pre-trial observation and treatment of any person indicted or charged with the commission of a felony. Under that statute the chief district judge or the presiding or resident judge of the superior court may commit such person for observation and treatment to a *State hospital* for a period not exceeding sixty days. For pre-trial observation and treatment of any person charged with a felony, a proper judge may order commitment to Broughton Hospital.

Robert Morgan, Attorney General
Parks H. Icenhour,
Assistant Attorney General

- - -

30 April 1973

Subject: Education; Colleges and Universities;
Western Carolina University; Authority of
Western Carolina University to Lease a
Residence Hall to Southwestern Technical
Institute for the Academic Year 1973-1974
in Order to House the Students of
Southwestern Technical Institute.

Requested by: Mr. William E. Scott, Jr.
School of Business
Western Carolina University

Question: May Western Carolina University rent or
lease a residence hall to the neighboring

Southwestern Technical Institute for the purpose of housing their students during the academic year 1973-1974?

Conclusion:

The Board of Governors of the constituent institutions of the University of North Carolina, as named in G.S. 116-4, has authorized the Board of Trustees of each constituent institution to supervise, control and manage the property of its constituent institution. The Board of Trustees may enter into a lease agreement with Southwestern Technical Institute whereby it leases a residence hall to the Technical Institute for the purpose of housing their students for the academic year 1973-1974, provided Western Carolina University has a residence hall that will be vacant beginning in the Fall Quarter of 1973.

The letter of inquiry informs us that there is a likelihood that Western Carolina University will have a residence hall vacant beginning in the Fall Quarter of 1973. Southwestern Technical Institute is proposing a program which it thinks will attract students from other counties and the Technical Institute is searching for a place to house the students during the academic year 1973-1974. If a lease of a residence hall of Western Carolina University is legal and valid, the University would propose, on a lump sum basis, to lease a residence hall to the Technical Institute if the residence hall is vacant. The lease contract would contain provisions whereby Western Carolina University would not exercise any rights or control over the students in the residence hall of the Technical Institute for disciplinary or academic purposes. The Technical Institute would furnish the necessary personnel to live in the hall and be responsible for the students' actions. There are many other details to be worked out if such lease is executed, such as whether or not the residence hall would be considered "off limits" to Western Carolina University students, and, for example, whether it would be desirable to require meal tickets for the students of the Technical Institute. There are perhaps other factors that should be considered, such as damage to the residence hall, fire protection, and a release of Western

Carolina University for injury to any student of the Technical Institute who may occupy the residence hall.

Under the provisions of G.S. 116-11 the Board of Governors has complete control over the property of the constituent institutions and may acquire, hold, convey or otherwise dispose of any real or personal property (see subsection (2) of G.S. 116-11). We have inquired of a responsible agent of the Board of Governors, and he informs us that the Board of Governors has committed to and vested in the Board of Trustees of each constituent institution control over the property of such institution.

G.S. 160A-274 provides, as follows:

"§160-274. *Sale, lease, exchange, and joint use of governmental property.*—(a) For the purposes of this section, 'governmental unit' means a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution.

"(b) Any governmental unit may, upon such terms and conditions as it deems wise, exchange with, lease to, lease from, sell to, purchase from, or enter into agreements regarding the joint use by any other governmental unit of any interest in real or personal property that it may own.

"(c) Action under this section shall be taken by the governing body of the governmental unit. Action hereunder by any State agency, except the State Highway Commission, shall be taken only after approval by the Division of Property Control of the Department of Administration. Action with regard to State property under the control of the State Highway Commission shall be taken by the Commission or its duly authorized delegate."

Under the provisions of this statute the Board of Trustees of Western Carolina University and the governing authority of the Technical

Institute may work out and execute a lease of the residence hall for the purposes described above, which lease must contain various factors as described above as to the care of the building, damage, etc. If the lump sum payment for the academic year in question is in the amount of \$50,000 or less, the approval of any other agency is not required and the matter may be agreed upon entirely between the parties. If the lump sum payment mentioned in the letter of inquiry is in excess of \$50,000, then the agreement will have to be approved by the Board of Governors of the University of North Carolina.

Robert Morgan, Attorney General
Andrew A. Vanore, Jr.,
Deputy Attorney General

- - -

7 May 1973

Subject: Public Contracts; Municipalities; Number of Bids Required for the Purchase of Apparatus, Supplies, Materials or Equipment

Requested by: Mr. George W. Saintsing
City Attorney of Thomasville

Question: Does G.S. 143-132, which requires at least three competitive bids on contracts under G.S. 143-129 for construction or repairs, require a municipality to secure at least three competitive bids on a public contract for the purchase of apparatus, supplies, materials or equipment where no construction or repair work is involved?

Conclusion: G.S. 143-132 does not require a municipality to secure at least three competitive bids on a public contract for the purchase of apparatus, supplies,

materials or equipment where no construction or repair work is involved.

The provisions of G.S. 143-132 relate solely to contracts under G.S. 143-129 which are for construction or repairs, and such contract cannot be awarded unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor. However, we find no provisions of Article 8 of Chapter 143 of the General Statutes which require a minimum of three bids for the purchase of apparatus, supplies, materials or equipment, where the estimated expenditure of public money is in an amount equal to or more than \$2,500. Therefore, where the municipality has complied with the provisions of G.S. 143-129 in advertisement of public bids for the purchase of apparatus, supplies, materials or equipment and not as many as three competitive bids are received, the municipality may award the contract to the lowest responsible bidder notwithstanding the fact that not as many as three competitive bids have been received on the contract.

It is noted that under G.S. 143-49 the Department of Administration through the Purchase and Contract Division has made available to counties, cities, towns, governmental entities, and other subdivisions of the State and public agencies thereof the services of the Department in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Advisory Budget Commission may adopt.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

7 May 1973

Subject: Constitution; Public Officers and
Employees; Dual Office Holding; Member
of General Assembly Serving as Member of
State Board of Agriculture

Requested by: Honorable Kennedy Sharpe, Senator
North Carolina General Assembly

Question: May a member of the General Assembly
serve concurrently as a member of the
State Board of Agriculture?

Conclusion: There is no constitutional prohibition
against a member of the General Assembly,
who is an elective officer, from being a
member of the State Board of Agriculture,
which is an appointive office, so long as
the person appointed to the Board of
Agriculture is a practical farmer engaged in
the profession of farming and meets the
other criteria specified in G.S. 106-2.

Article XIV, Section 7 of the Constitution, prior to the adoption
of the new Constitution effective on July 1, 1971, provided that
no person who holds any office or place of trust or profit under
the United States or any department thereof, or under this State
or under any other state or government, shall hold or exercise any
other office or place of trust or profit under authority of this State
or be eligible to a seat in either house of the General Assembly.

Article VI, Section 9 of the present Constitution contains the
provisions against dual office holding. This section provides, in part,
that no person who holds any office or place of trust or profit
under the United States or any department thereof, or under any
other state or government, shall be eligible to hold any office in
this State that is filled by election by the people. No person shall
hold concurrently any two offices in this State that are filled by
election of the people. No person shall hold concurrently any two
or more appointive offices or places of trust or profit or any
combination of elective and appointive offices or places of trust
or profit except as the General Assembly shall provide by general
law.

G.S. 128-1 states:

"No person who shall hold any office or place of trust

or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly except as provided in G.S. 128-1.1."

G.S. 128-1.1 states that any person who holds an appointive office, place of trust or profit in State or local government, is hereby authorized by the General Assembly, pursuant to Article VI, Section 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

Subsection (b) provides that any person who holds an elective office in State or local government is hereby authorized by the General Assembly pursuant to Article VI, Section 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit in either State or local government.

Thus, presently there is no constitutional provision similar to Article XIV, Section 7 of the old Constitution which prohibited a person who holds an office in this State from being eligible to a seat in either house of the General Assembly. Although G.S. 128-1 contains similar language, it is qualified by the phrase found therein "except as provided in G.S. 128-1.1". Under G.S. 128-1.1 a person has been authorized by the General Assembly pursuant to the authority contained in Article VI, Section 9, of the Constitution to hold concurrently one appointive office and one elective office in either State or local government. Thus, we conclude that so long as the member of the General Assembly meets the criteria set forth in G.S. 106-2 for members of the Board of Agriculture, such person would not be prohibited by the Constitution from serving in the elective office as a member of the General Assembly and in the appointive office as a member of the Board of Agriculture concurrently.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

7 May 1973

Subject: Constitution; Public Officers and Employees; Dual Office Holding; Postmaster or Postal Employee Serving as Member of Local Board of Education

Requested by: Mr. R. W. Dalrymple, Chairman
Lee County Board of Education

Question: May a postmaster or other federal postal employee serve as a member of a local board of education, which is an elective office?

Conclusion: Under Article VI, Section 9 of the North Carolina Constitution, any person holding a federal office or place of trust or profit would not be eligible to hold any office in North Carolina that is filled by election by the people.

A postmaster has been held to be a federal officer; therefore, he would not be eligible to serve on the board of education. A postal employee would not be disqualified to serve on the board of education by reason of Article VI, Section 9 of the North Carolina Constitution. However, if the election for the local board of education is partisan, then the federal Hatch Act may disqualify both the postmaster and a postal employee.

Article VI, Section 9 of the North Carolina Constitution provides:

"It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office

in this State that is filled by election by the people."

The federal Hatch Act prohibits certain public employees from being a candidate if the candidate represents a national or state political party. Therefore, if the local board of education is elected on a partisan basis, then it is possible that the Hatch Act would prohibit both a postmaster and federal postal employees from being a candidate for local boards of education. A person who is a mere postal employee as opposed to being an officer of the United States or any department thereof would not, by virtue of Article VI, Section 9, be prohibited from holding an elective office in this State. However, it is suggested that any postal employee who is interested in serving on any board where he would be elected on a partisan basis should contact the Office of the General Counsel, U. S. Civil Service Commission, Washington, D. C., to ascertain whether under the federal Hatch Act he would be disqualified from serving in such a position.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

9 May 1973

Subject: Education; Public Schools; Constitutional Mandate as to the Length of Operations of Public Schools; Article IX, Section 2, of the Constitution of North Carolina; Statutory Definition of School Day, School Month and School Term; Authority of the General Assembly to Authorize the State Board of Education to Suspend the Operation of a Public School or to Grant Recess Periods

Requested by: Mr. William W. Sturges
Attorney for Charlotte-Mecklenburg Board of Education

Question:

May a local board of education petition for and may the State Board of Education grant a reduction in the school term which would result in a school term of less than 180 days?

Conclusion:

The constitutional provisions of Article IX, Section 2, of the North Carolina Constitution, require the maintenance of a system of public schools of a general and uniform nature for at least nine months in every year as a minimum; it does not mean that a school must be operated for every calendar day in the month, but it leaves to the General Assembly the power to define a school day, a school month and a school term. The General Assembly has granted the State Board of Education the authority upon adequate conditions of emergency or other conditions to suspend the operation of the public schools for a certain number of days, not to exceed a period of 60 days, in its discretion and according to conditions confronting the school.

Article IX, Section 2, Subsection (1), of the present Constitution of North Carolina, relating to Education, is as follows:

"Sec. 2. *Uniform system of schools.*

(1) *General and uniform system: term.* The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be *maintained* at least nine months in every year, and wherein equal opportunities shall be provided for all students." (Emphasis added)

Subsection (2) deals with financial responsibility of local governments and is not pertinent to this question. A close look at the above quoted provision shows that what must be provided by the General Assembly is "a general and uniform system of free public

schools". The system is to be "maintained" for at least nine months in every year. This does not mean that a public school must be open and operating every day in the calendar month, including Saturdays and Sundays, but the maintenance provision of nine months in every year must not be taken out of context of the whole provision and must be referred to and interpreted in the light of the other phrase providing for "a general and uniform system". In our way of thinking this means that the school system must be set up and organized by financial funding, teaching staff and other employees, and by facilities and equipment so that it can operate and be available for the number of school months as defined by the General Assembly in G.S. 115-36(b). There is no mandatory obligation to operate a public school every calendar day for every calendar month in the nine-month period. The terms in the constitutional provision are left to the definition prescribed by the General Assembly, and again we state that it is the system that must be maintained for nine months, and the framers of the constitutional provision were careful to use the word "maintain" and not to say that the operation of the public schools must be for every day in the calendar month.

In the former Constitution of this State, Article IX, Section 2, requires the establishment of a general and uniform system of public schools, and Section 3 of this same Article is as follows:

"Each county of the State shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment."

G.S. 115-36(a) provides for a school day of a minimum of not less than six hours. It also provides that the superintendent of every county and city board of education, in the event of an emergency, act of God, or any other condition requiring the termination of classes before six hours have elapsed, may suspend the operation of any school for that particular day without loss of credit to the pupil or loss of pay to the teacher. In G.S. 115-36(b) it is provided that a school month shall consist of 20 teaching days, and that schools shall not be taught on Saturdays unless the needs of

agriculture, or other conditions in the unit or district make it desirable that schools be taught on such days. It also provides that whenever it is desirable to complete the school term of 180 days in a shorter term than nine calendar months the board of education of any administrative unit may, in its discretion, require that school should be taught on legal holidays. It is provided by G.S. 115-36(c) that the school term for instructing pupils shall be 180 days, and then there follows certain provisos, which we quote:

"Provided, that the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, may suspend the operation of any school or schools in such units, not to exceed a period of 60 days of said term of 180 days, when in the sound judgment of the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, conditions justify such suspension. Provided, further, that when the operation of any school is suspended the period of suspension shall be deducted from the total of 180 days included for each school year operation, all teachers shall be entitled to normal pay for the days of school of the suspended term, not to exceed a period of 15 school days during the school term."

The last paragraph of the section provides for school suspension by the State Board of Education, if it desires to do so, for the planting or harvesting of crops "or any emergency conditions that make such action necessary." These definitions and authorized suspensions of public schools, as set out in G.S. 115-36, in some form or other have been in force for many years. The Session Law references of this section go back to 1955 when all of the school laws were revised. It is clear, therefore, that the General Assembly had a right to define the words in the Constitution, the number of school days that would constitute a month and to authorize the suspension of school days by the North Carolina State Board of Education. The mandate requiring a general and uniform system to be maintained for the minimum period does not interfere with the right of the General Assembly to authorize the appropriate agency to grant suspension for, while the maintenance of the system for

the required period is mandatory, the definitions and the mode of performance are prescribed by statute. The experience of operating public schools shows that many things arise in human affairs that require suspensions, such as a destruction of school buildings by fire, the bursting of pipes in the plumbing system, the explosion or disablement of school boilers to provide heat for the buildings, racial conflicts and extreme weather conditions.

We conclude, therefore, that a local board of education may petition for, and the State Board of Education may grant, a reduction in the school term which would result in a school term of less than 180 days. This cannot be done for arbitrary reasons but must be based upon adequate and sound reasons and conditions.

Robert Morgan, Attorney General
Andrew A. Vanore, Jr.,
Deputy Attorney General

- - -

14 May 1973

Subject: State Departments, Institutions and
Agencies; Water and Air Resources;
Reclassification of Streams by Board;
Notice and Procedure Required Under G.S.
143-214.1

Requested by: Mr. D. L. Coburn, Chief
Water Quality Division
Department of Water and Air Resources

Question: May the Board of Water and Air Resources
assign a new classification to any waters of
the State if the public notice of
reclassification: (1) fails to specify the
waters proposed to be classified; or (2)
specifies a proposed classification which
differs from the new classification desired
to be assigned?

Conclusion:

The Board may not undertake any action not specified in the public notice, since the object of the notice is to inform the public of proposed actions of the Board.

G.S. 143-214.1, *inter alia*, directs and empowers the Board to develop and adopt a series of classifications appropriate for classifying each of the waters in the State and to classify each such water. The section also sets forth the procedure for classification and reclassification.

This procedure requires that, prior to assignment of any classification or reclassification to any waters of the State, public hearing be held, and that notice be given by publication at least 20 days in advance of hearing. The notice must give details of the proposed action or must specify that copies of the detailed proposed action may be obtained on request from the office of the Board.

As used herein, "public notice" means published notice and any informational materials referred to in the notice and disseminated in connection therewith.

Information accompanying the request for opinion reveals that the published notice of public hearing stated that the Board proposed to change to new, unspecified classifications certain unspecified streams lying in named river basins and affecting named counties. The notice further indicated that detailed information specifically setting forth the names of the streams and the proposed new classifications thereof was available at the offices of the Department of Water and Air Resources in Raleigh. This detailed information was widely circulated to members of the public.

Following dissemination of this information, and prior to, during and following the public hearing, proposals were received to reclassify streams other than those specified in the disseminated information, and to reclassify streams specified in the information to classifications other than those proposed in the information.

It is the opinion of this Office that the clear intent of G.S. 143-214.1(e) is that the Board of Water and Air Resources shall notify the public of the specific action proposed to be taken by

the Board in classifying or reclassifying the waters of the State so that the public may appear at the public hearing and present its views with regard to the proposed specific action. If an action not specified in the notice is thereafter undertaken, the public not only will have been deprived of the notice to which it was entitled, but actually may have been misled. This would defeat the purpose of the statutory provisions.

G.S. 143-214.1(f) states in pertinent part:

"Upon completion of hearings and consideration of submitted evidence and arguments with respect to *any proposed action* of the Board pursuant to this section, the Board shall adopt its final action *with respect thereto* and shall publish such final action as part of its official regulations." (Emphasis added)

The quoted language appears to contemplate that the action of the Board shall be restricted to "any proposed action", that is, action set forth in the public notice. It is concluded, therefore, that the Board may take only one of two actions:

1. It may adopt a new classification set forth in the public notice.
2. It may retain the existing classification.

If the Board desires to take any action other than that specified in the public notice, it appears that the Board first must conform with the notice and hearing provisions set forth in G.S. 143-214.1(e) and (f).

Robert Morgan, Attorney General
Henry T. Rosser,
Assistant Attorney General

- - -

14 May 1973

Subject: Administration of Estates; Bond; G.S. 28-34

Requested by: Honorable Robert G. Jarrett
Clerk of Superior Court
McDowell County

Question: Under the provisions of G.S. 28-34, which requires an executor, administrator or collector to execute a bond payable to the State, with two or more sufficient sureties, when a husband and wife owning property by the entirety sign such a bond, does this constitute one surety or two sureties?

Conclusion: Husband and wife constitute one surety under the provisions of G.S. 28-34.

G.S. 28-34 provides in part:

"Every executor from whom a bond is required by law, and every administrator and collector, before letters are issued, must give a bond payable to the State, with two or more sufficient sureties, to be justified before and approved by the clerk, conditioned that such executor, administrator or collector shall faithfully execute the trust reposed in him and obey all lawful orders of the clerk or other court touching the administration of the estate committed to him"

The question has arisen as to whether a husband and wife who own property as tenants by the entirety, when signing as surety a bond of an executor, administrator or collector, constitute one surety or two sureties under G.S. 28-34.

According to *N.C. Index 2d*, Husband and Wife, Section 15, discussing the nature and incidents of an estate by the entirety,

"An estate by the entirety is based upon the fiction of unity resulting from marriage; the husband and wife constitute a legal entity which is separate and distinct from their individual status, and own the whole together, with the right of survivorship, by virtue of the original conveyance." Strong cites *Woolard v. Smith*, 244 N.C. 489, 94 S.E. 2d 466.

Also according to Strong,

"Land owned by husband and wife as tenants by the entireties is not owned by them in shares, but by the two considered as a separate legal being; consequently, no interest in such property passes under the will of the first to die.", citing *Olive v. Biggs*, 276 N.C. 445, 173 S.E. 2d 301.

Neither a judgment obtained by a third person against either spouse, nor a judgment obtained by one spouse against the other is a lien on the land held by them by the entireties. *General Air Conditioning Co. v. Douglass*, 241 N.C. 170, 84 S.E. 2d 828. Therefore, it is necessary that both husband and wife sign as sureties if they are pledging property held as an estate by the entireties and such signature would constitute only one surety.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

14 May 1973

Subject: Jury; Removal of Names from Jury List
After List is Prepared

Requested by: Honorable Louise S. Allen
Clerk of Superior Court
Washington County

Question: After a jury list is prepared by the jury commission and submitted to the register of deeds, does the jury commission have authority to withdraw the names of persons from the list who are disqualified from service by reason of physical or mental incapacity?

Conclusion: No. Once the list is prepared the jury commission has no control over it.

G.S. 9-2 provides that it is the duty of a jury commission in each county to biennially prepare a list of prospective jurors which are then submitted to the register of deeds of the county.

G.S. 9-4 provides:

"As the jury list is prepared, the name and address of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours."

The jury commission has only such authority as is specifically conferred upon it by statute. The statutes do not give the jury commission any authority to revise a list once it has been prepared and submitted to the register of deeds for custody.

The statutes do provide a method for persons to be excused from jury duty. This procedure is set out in G.S. 9-6.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

15 May 1973

Subject: Hospitals; Administration of Estates; Lien of State Hospitals on Estate of Patient; G.S. 143-126; Priority of Funeral Expenses; G.S. 28-105

Requested by: Miss Elmanda S. Yates
Assistant Clerk, Superior Court
Davidson County

Question: Is the priority of payment of funeral expenses from the estate of a decedent created by G.S. 28-105 limited to \$600 when considered with the lien created by G.S. 143-126 on the estate of a former patient in a State hospital?

Conclusion: Yes. G.S. 143-126 and G.S. 28-105 have to be considered together.

G.S. 143-126(a) provides:

"In the event of the death of any inmate, pupil or patient of either of said institutions above named, leaving any such cost of care, maintenance, training and treatment unpaid, in whole or in part, then such unpaid cost shall constitute a first lien on all the property, both real and personal, of the said decedent, *subject only to the payment of funeral expenses and taxes to the State of North Carolina.*" (Emphasis added)

G.S. 28-105 provides in part:

"The debts of the decedent must be paid in the following order: . . . Second class. Funeral expenses to the extent of six hundred dollars (\$600.00). This limitation shall not include cemetery lot or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference

of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of six hundred dollars (\$600.00) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the deceased or to his or her beneficiaries."

These statutes must be construed together. The extent of the funeral debt's priority over the lien created by G.S. 143-126 is limited to \$600 by G.S. 28-105.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

15 May 1973

Subject: Hospitals; Administration of Estates; Lien of State Hospitals on Estate of Patient; G.S. 143-126; Widow's and Child's Allowances; G.S. 30-15; G.S. 30-17

Requested by: Miss Elmanda S. Yates
Assistant Clerk, Superior Court
Davidson County

Question: Is the lien on the estate of patients in certain State hospitals created by G.S. 143-126 superior to the right of the widow and minor child of a deceased patient to receive a year's allowance pursuant to G.S. 30-15 and 30-17?

Conclusion: No. The widow's and child's year's allowances are not subject to a lien created by G.S. 143-126.

G.S. 143-126(a) provides:

"In the event of the death of any inmate, pupil or patient of either of said institutions above named, leaving any such cost of care, maintenance, training and treatment unpaid, in whole or in part, then such unpaid cost shall constitute a first lien on all property, both real and personal, of the said decedent, subject only to the payment of funeral expenses and taxes to the State of North Carolina."

G.S. 30-15 provides:

"Every surviving spouse of an intestate or of a testator, whether or not he has dissented from the will, shall, unless he has forfeited his right thereto as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of two thousand dollars (\$2,000.00) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

G.S. 30-17 provides in part:

"Whenever any parent dies leaving any child under the age of 18 years, . . . every such child shall be entitled, besides its share of the estate of such deceased parent, to an allowance of six hundred dollars (\$600.00) for its support for the year next ensuing the death of such parent, less, however, the value of any articles consumed by said child since the death of said parent. Such allowance shall be exempt from any lien, by judgment or execution against the property of such parent."

Thus by the terms of both G.S. 30-15 and 30-17, the allowances therein provided are exempt from the lien created by G.S. 143-126.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

16 May 1973

Subject: Criminal Law and Procedure; Arrest;
Warrants; Oath Required; Necessity of
Showing Probable Cause in Warrant Itself

Arrest and Search Warrants; Transcription
of Facts Showing Probable Cause

Requested by: Mr. Paul L. Pawlowski
Police Department Attorney
City of Gastonia

Questions: (1) Does a police officer have to swear
twice to an arrest warrant for proper
execution?

(2) Does probable cause, in fact, have to
be written down in the affidavit to the
arrest warrant in order that it be lawfully
issued? (See *Whitely v. Warden of Wyoming
Penitentiary*, 401 U.S. 560; *State v.
Harvey*, 281 N.C. 1)

(3) Can the probable cause in an arrest
warrant or search warrant be written out
in the affidavit first by a police officer or
must the magistrate or judge always be the
one to write it down in order that warrant
be lawfully issued?

Conclusions: (1) No.

(2) No.

(3) It may be written by the police officer or the magistrate, but the party seeking the warrant must be examined under oath.

(1) A police officer need not swear twice to obtain an arrest warrant. Under G.S. 15-19, the complainant must be examined under oath and under G.S. 15-20, if it then appears a crime has been committed, a warrant shall issue. This comprehends that, before a determination of whether or not to issue an arrest warrant is made, all matters to be considered on the question shall have been presented under oath.

(2) The complaint need not be written, *State v. Bryson*, 84 N.C. 780 (1881); and sworn oral information may supplement a written affidavit if given prior to determination of whether or not there is probable cause, *Frazier v. Roberts*, 441 F. 2d 1224 (8th Cir. 1971). However, if a written affidavit is used, and it fails to show sufficient facts to permit a finding of probable cause, problems with regard to damage liability and the use of evidence seized incidental to an arrest may arise, necessitating further hearings. Therefore, the wiser approach is to insure such affidavits do show such facts in writing.

(3) With regard to arrest warrants, a written affidavit is not required, answer (2) above, but evidently is a practice in the State, see e.g. *State v. Tensley*, 9 N.C. App. 477. It may be written by anyone, but the facts contained therein must be sworn to by the party seeking the warrant at the time he is being examined under oath, and the judicial officer should examine the affidavit as to the facts therein.

With regard to search warrants, the same is true as G.S. 15-26 requires the affidavit be "signed under oath or affirmation". This, of course, implicitly requires the seeker to affirm the information as true either orally or in writing in some manner, either specific or general.

Robert Morgan, Attorney General
R. N. League,
Assistant Attorney General

18 May 1973

Subject: Criminal Law and Procedure; Extraditions;
G.S. 15-80; Courts; Magistrates

Requested by: Honorable Maurice Braswell
Resident Judge
Twelfth Judicial District

Question: Under the provisions of G.S. 15-80, relating to waiver of extradition, does a magistrate have authority to take the waiver of extradition proceedings?

Conclusion: No. A magistrate is not a judge of a court of record within this State within the meaning of G.S. 15-80.

G.S. 15-80, which is a part of Article 8 (Extradition) of Chapter 15 of the General Statutes, provides in part:

"Any person arrested in this State charged with having committed any crime in another state . . . may waive the issuance and service of the warrant provided for in §§15-61 and 15-62 and all other procedure incidental to extradition proceedings, by executing or subscribing *in the presence of a judge of any court of record within this State* or a clerk of the superior court a writing which states that he consents to return to the demanding state" (Emphasis added)

The question has arisen as to whether a magistrate has authority under this statute to accept a written waiver.

G.S. 7A-170 is, in part, as follows:

"A magistrate is an officer of the district court."

There appears to be no statutory reference referring to a magistrate as "a judge". G.S. 7A-292 lists additional powers of magistrates. No mention is made of accepting waivers under Chapter 15 of

extradition proceedings. The term "magistrate" is not mentioned in Article 8 of Chapter 15.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

22 May 1973

Subject: Mental Health; Health and Accident Insurance Policies; Issuance and Delivery; Continuation of Coverage for Mentally Retarded or Physically Handicapped Children

Requested by: Mr. Ted White
Director of Reimbursement
Murdoch Center

Question: Must health and accident insurance policies, hospital service policies, or medical service plan policies delivered or issued for delivery in North Carolina now contain a continuation of coverage clause for mentally retarded or physically handicapped children?

Conclusion: Health and accident insurance policies, hospital service policies, or medical service plan policies delivered or issued for delivery in North Carolina must now contain a continuation of coverage clause for mentally retarded or physically handicapped children.

G.S. 58-251.3 as originally enacted by the 1969 General Assembly applied only to individual health and accident insurance policies, hospital service policies or medical service plan policies. By amendment of the 1971 General Assembly, group policies were also

included, effective July 21, 1971. G.S. 58-251.3 reads as follows:

"Policy coverage to continue as to mentally retarded or physically handicapped children.--An individual or group accident and health insurance policy, hospital service policy, or medical service plan policy, delivered or issued for delivery in this State after July 1, 1969, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract, shall also provide in substance that attainment of such limiting age shall not operate or terminate the coverage of such child while the child is and continues to be (i) incapable of self-sustaining employment by reason of mental retardation or physical handicap; and (ii) chiefly dependent upon the policyholder or subscriber for support and maintenance: Provided, proof of such incapacity and dependency is furnished to the insurer, hospital service plan corporation, or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation, but not more frequently than annually after the child's attainment of the limiting age."

The statute is clear and unambiguous. By its own terms it is effective only to policies "delivered or issued for delivery in this State after July 1, 1969". The amendment is equally clear. We are of the opinion that the statute does not apply to individual policies issued or issued for delivery prior to July 1, 1969, or to group policies so delivered or issued for delivery prior to July 21, 1971. Any attempt to affect policies prior to these effective dates would, in our opinion, pose serious constitutional questions as to violation of the constitutional prohibition against a State's impairing obligations of contract.

Robert Morgan, Attorney General
Parks H. Icenhour,
Assistant Attorney General

23 May 1973

Subject: Social Services; Aid to the Aged and Disabled Liens; G.S. 108-29: Chapter 204, Session Laws of 1973; Repeal of Lien; Realty Acquired After Effective Date of Repealing Act

Requested by: Dr. Renee Westcott
Commissioner
North Carolina Department of Social Services

Question: Under the provisions of G.S. 108-29 and Chapter 204 of the Session Laws of 1973, do Aid to the Aged and Disabled payments made to a recipient before April 16, 1973, constitute a lien on realty which is acquired on or after April 16, 1973, by the person who received such payments?

Conclusion: Under the provisions of G.S. 108-29 and Chapter 204 of the Session Laws of 1973, Aid to the Aged and Disabled payments made to a recipient before April 16, 1973, do not constitute a lien on realty which is acquired on or after April 16, 1973, by the person who received such payments.

G.S. 108-29 is as follows:

"Creation of claim and lien on property.--There is hereby created a general claim and a lien, enforceable as hereinafter provided, upon the real property of any person who receives assistance to the aged and disabled. The claim and the lien shall be for the total amount of assistance paid to such person from and after October 1, 1951, if the recipient receives assistance as an aged person, or October 1, 1963, if the recipient receives assistance as a permanently and totally disabled person."

Section 1 of Chapter 204 of the Session Laws of 1973 provides that the statutes pertaining to Aid to the Aged and Disabled liens and claims, G.S. 108-29 through G.S. 108-37.1, are repealed. The remainder of Chapter 204 is as follows:

"Sec. 2. This act shall not apply to any claims and liens created pursuant to G.S. 108-29 prior to the effective date of this act, and such claims and liens shall be entitled to full and complete enforcement as by law heretofore provided.

"Sec. 3. This act shall become effective upon ratification.

"In the General Assembly read three times and ratified, this the 16th day of April, 1973."

It appears that a proper interpretation of Section 2 of Chapter 204 referred to above is that to the extent of realty acquired on or after the effective date of the act there was no lien *created* prior to the effective date of the act. A contrary interpretation would necessitate attributing to the General Assembly what is deemed an unlikely intent, that is, that years hence one welfare recipient might acquire realty without any lien attaching while another recipient would be forever subject to having the lien attach to any property he might acquire simply because the assistance was received in his case prior to April 16, 1973.

Robert Morgan, Attorney General
R. S. Weathers,
Assistant Attorney General

- - -

23 May 1973

Subject: Social Services; Aid to the Aged and
Disabled Liens; Repeal of Lien Laws;
Chapter 204 of the Session Laws of 1973;
G.S. 108-29; Controlling Date as to Liens

and Claims Not Affected by the Repeal of
the Lien Laws

Requested by:

Dr. Renee Westcott
Commissioner
North Carolina Department of Social
Services

Question:

For the purposes of Chapter 204 of the Session Laws of 1973, which repealed the Aid to the Aged and Disabled lien and claim laws except for liens and claims created prior to April 16, 1973, what is the controlling factor as to whether an Aid to the Aged and Disabled payment is subject to the lien and claim created by G.S. 108-29?

Conclusion:

For the purposes of Chapter 204 of the Session Laws of 1973, the controlling factor as to whether an Aid to the Aged and Disabled payment is subject to the lien and claim created by G.S. 108-29 is whether the check by which the payment was made was actually *received* by the Aid to the Aged and Disabled recipient before April 16, 1973. If the check was received before April 16, 1973, the payment is subject to the lien. If the check was received on or after April 16, 1973, the payment is not subject to the lien.

As presented in the letter of inquiry dated May 2, 1973, the question was couched in terms of the date of authorization of payment, and mentioned that "all checks authorized for the month of April are dated April 1, 1973, regardless of the date of authorization." The reason that the date of the actual receipt of the check by the Aid to the Aged and Disabled recipient is controlling, regardless of the date of authorization for the check or the date shown on the check as the date of issue, is G.S. 108-29, the first sentence of which is as follows:

"There is hereby created a general claim and a lien, enforceable as hereinafter provided, upon the real property of any person who *receives* assistance to the aged and disabled." (Emphasis added)

Robert Morgan, Attorney General
R. S. Weathers,
Assistant Attorney General

- - -

30 May 1973

Subject: Public Contracts; Nonprofit Corporation;
Federal Grants; Purchase of
Communication Equipment; Local
Governments

Requested by: Mr. John W. Ervin, Jr.
Attorney, Regional Health Council
Eastern Appalachia, Inc.

Question: May the Regional Health Council of Eastern Appalachia, Inc., a nonprofit corporation, by agreement extend a contract for the purchase of communications equipment with public funds for participants in an emergency communication system in a four-county region entered into in 1971 to permit purchases under the contract by participants in the communication system which are located in the other counties of the region?

Conclusion: As the Regional Health Council of Eastern Appalachia, Inc., is a nonprofit corporation, it is not bound by the competitive bidding statutes, and it may negotiate or extend a contract without

complying with the competitive bidding statutes. However, purchases made with public funds by the Council for any governmental unit, agency or institution have to be in compliance with the applicable statute for the purchase of equipment.

The Health Council of Eastern Appalachia, Inc., a nonprofit corporation, is administering a federal grant under the Appalachia Regional Development Act of 1965, 40 U.S.C.A. App., for the installation of an emergency medical communication system to serve the four counties of McDowell, Alexander, Burke and Caldwell. The system serves State, county and municipal agencies as well as nonprofit organizations. The federal grant pays 80 percent of the entire cost. The participating members pay 20 percent of the equipment cost that it receives plus a pro rata share of the control equipment cost used in common by all members. See 41 N.C.A.G. 319.

A contract was awarded on November 19, 1971, to Motorola by the Council for an emergency and administrative radio communication system for ambulances, hospitals, rescue squads and other participants in the four-county demonstration area. The Council now asks whether or not the contract unit prices can be extended by agreement to cover purchases by other participants in the communication system outside of the four-county area of the Demonstration Project.

The Council is a nonprofit corporation. It is not bound by the competitive bidding statutes and it may enter into and extend contracts without complying with the competitive bidding statutes. The purchase of equipment with public funds for local governmental units and agencies is required to be in accordance with the competitive bidding provisions of G.S. 143-129. It provides that no contract shall be awarded for the purchase of equipment requiring an estimated expenditure of public money in an amount equal to or more than \$2,500.00 by any county, city, town or other subdivision of the State, unless the provisions of the section are complied with. It is the opinion of this Office that the Council in making purchases with public funds for local governmental units,

agencies, and institutions is required to comply with the provisions of G.S. 143-129. The purchase of communications equipment by or for use by local governmental units with public funds under an agreement to extend the prices established by the contract entered into in 1971 to participants outside the four-county demonstration area would be contrary to the provisions of G.S. 143-129.

Robert Morgan, Attorney General
Eugene A. Smith,
Assistant Attorney General

- - -

30 May 1973

Subject: Education; Wire Interception and
Interception of Oral Communications;
Legality of Superintendent of Schools
Taping Conversation With Employee
Without Informing Employee That the
Conversation is Being Taped

Requested by: Mr. Donald P. Brock
Attorney, Jones County Board of
Education

Question: May a superintendent of schools tape a
conversation with an employee without
advising the employee that the
conversation is being taped?

Conclusion: A superintendent of schools using a tape
recorder may lawfully tape a conversation
with an employee without advising the
employee that the conversation is being
taped.

This question involves the question of interception of oral communications, which is governed by Federal Laws (18 U.S.C.A. 2510, *et seq.*—Chapter 119—Wire Interception and Interception of

Oral Communications). This is a chapter of the Omnibus Crime Control and Safe Streets Act of 1968. In 18 U.S.C.A. 2511(d) we find the following:

"It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution and Laws of the United States or of any state or for the purpose of committing any other injurious act."

We have examined the State law on wiretapping, and we do not find any State law that would prohibit any interception of oral communication as described in your letter.

It appears, therefore, that the superintendent of schools may tape a conversation with an employee without advising the employee that the conversation is being taped. However, 18 U.S.C.A. 2515 prohibits such interceptions from being used in evidence in any trial, hearing, or other proceeding before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a state, or a political subdivision thereof if the disclosure of such information would be in violation of the chapter cited above.

The most definitive case in discussing such matters is *United States v. White*, 401 U.S. 745, 28 L.Ed. 2d 453, 91 S.Ct. 1122. This case explores the problem of when such tapes can be evidence in hearings and when they cannot be. *Lopez v. United States*, 373 U.S. 427, 10 L.Ed. 2d 462, 83 S.Ct. 1381, and also the annotation to this case which appears in 10 L.Ed. 2d 1169, both discuss the admissibility in evidence of such recordings and are informative. In addition, the District Federal Court in *United States v. Carroll*, 337 F.Supp. 1260, gives an interesting discussion about the legality of such tapes or recordings and when they may be used in evidence.

Robert Morgan, Attorney General
Andrew A. Vanore, Jr.,
Deputy Attorney General

- - -

30 May 1973

Subject: Dogs; G.S. 67-13 and 67-30; Disposition of
Dog Tax Funds in Rockingham County

Requested by: Mr. Hugh P. Griffin, Jr.
County Attorney,
Rockingham County

Question: In Rockingham County, a county that has
a dog warden appointed by the County
Commissioners pursuant to G.S. 67-30,
what disposition is made of the dog tax
collected pursuant to G.S. 67-13?

Conclusion: Dog tax funds collected pursuant to G.S.
67-13 are dispensed pursuant to G.S.
67-30.

G.S. 67-13 and 67-30 are both applicable to Rockingham County.

G.S. 67-5 provides for each county to collect a dog tax on most
dogs over six months of age.

G.S. 67-13 provides in part:

"The money arising under the provisions of this article
shall be applied to the school funds of the county
in which said tax is collected: Provided, it shall be
the duty of the county commissioners, upon complaint
made to them of injury to person or injury to or
destruction of property by any dog, upon satisfactory
proof of such injury or destruction, to appoint three
freeholders to ascertain the amount of damages done,

including necessary treatment, if any, and all reasonable expenses incurred, and upon the coming in of the report of such jury of the damage as aforesaid, the said county commissioners shall order the same paid out of any moneys arising from the tax on dogs as provided for in this article. . . ." (Emphasis added)

G.S. 67-30 provides in part:

"The board of county commissioners in each county in the State is hereby authorized, in its discretion, to appoint one or more county dog wardens, and to determine the amount of his salary and travel allowance, both of which shall be paid out of the proceeds of the county dog tax. . . . In the event that any surplus remains in the county dog damage fund after all dog damage claims have been paid at the end of a fiscal year, such surplus may no sooner than six months after the close of such fiscal year, at the direction of the board of county commissioners, *be paid into the county general fund.*" (Emphasis added)

The County Commissioners of Rockingham County, pursuant to G.S. 67-30, have appointed a dog warden. The dog tax collected pursuant to G.S. 67-13 is used to pay the salary and expenses of the dog warden but the taxes collected are not sufficient to pay the total salary and expenses.

The question has arisen as to whether Rockingham County is authorized to use the dog tax to pay any of the salary and expenses of the dog warden in view of the language of G.S. 67-13 quoted above.

In our opinion, the County must dispense dog tax funds collected pursuant to G.S. 67-13 under the provisions of G.S. 67-30 since the County Commissioners have appointed a dog warden pursuant to its provisions and G.S. 67-30 is the most recent enactment. The Chapter enacting G.S. 67-30 (Session Laws of 1951, Chapter 931) provides that "All laws and clauses of laws in conflict with this Act are hereby repealed".

In the event a surplus of dog tax funds accumulate in any year, it should be paid into the county general fund pursuant to G.S. 67-30.

Robert Morgan, Attorney General
Millard R. Rich,
Assistant Attorney General

- - -

30 May 1973

Subject: Education; Colleges and Universities; Fair Labor Standards Act; Joint Employment of Employees Between Different Agencies of the University; Aggregation of Hours Worked by Joint Employees

Requested by: Mr. Dan Burleson, Wage-Hour Compliance Officer
University Personnel Department
The University of North Carolina at Chapel Hill

Question: Are employees employed by the University staff and additionally employed by the Student Government to be considered engaged in joint employment under the Fair Labor Standards Act?

Conclusion: Employees employed by the staff of the University of North Carolina at Chapel Hill and who are additionally employed by the Student Government Agency are joint employees of the University of North Carolina and in determining the number of hours worked the aggregate of the hours worked under both agencies should be computed for liability under the Fair Labor Standards Act.

The Wage-Hour Compliance Officer of the University of North Carolina at Chapel Hill, Personnel Department, states that he is reviewing the status of certain University employees who, in addition to their University staff employment, are additionally employed by the Student Government. He desires to know if this is joint employment under the Fair Labor Standards Act, and, if so, he states that certain University Departments would be incurring overtime wage liability as a result of such additional employment by staff employees. He particularly asks if employees of Student Government should be considered as employees of the University of North Carolina at Chapel Hill.

The Student Government Agency of the University of North Carolina at Chapel Hill is an integral part of this University and is an agency of the University. This was determined by the Supreme Court of North Carolina in the case of *In the matter of Anne Royal Carter*, 262 N.C. 360, 370, 371.

The Supreme Court of the United States held in the case of *Maryland v. Wirtz*, 392 U.S. 183, 20 L.Ed. 2d 1020, 88 S.Ct. 2017, that employees of institutions of higher learning were subject to the Fair Labor Standards Act (29 U.S.C.A. 203, *et seq.*). These employees should be considered employees of one employer, that is, the University of North Carolina at Chapel Hill. The fact that these employees work part of the time in staff employment and part of the time for the Student Government does not affect the situation, and although they are joint employees of two departments they are still employees of one employer.

Those interested in the problem of joint employees will find cases where employees are joint employees although working part of the time for an individual and part of the time for a partnership in which such individual is one of the partners. In this case will also be found joint employees of affiliated corporations and various other employer connections (see: *Wirtz v. Hebert*, C.C.A.-5, 368 F. 2d 139). We are of the opinion, therefore, that the Wage-Hour Compliance Officer should aggregate the number of hours worked by these employees and that the employment record of such employees acting for the University staff and for the Student Government should be added together to determine liability under

the Fair Labor Standards Act. The same is true as to the joint employees of the different departments of the University.

Robert Morgan, Attorney General
Ralph Moody,
Special Counsel

- - -

4 June 1973

Subject: State Departments, Institutions and
Agencies; Highway Commission; Outdoor
Advertising Control Act

Requested by: Mr. Bruce A. Lentz
Secretary, Department of Transportation
and Highway Safety

Question: What is the effective date of the Outdoor
Advertising Control Act, Article 11 of
Chapter 136 of the North Carolina General
Statutes?

Conclusion: The effective date of the Outdoor
Advertising Control Act is the date of
ratification, July 6, 1967, but the Act did
not become operative until the
contingencies specified in the Act had
occurred, which was July 17, 1972.

The Highway Beautification Act of 1965 requires the states to control outdoor advertising within 660 feet of the right of way along interstate and primary federal-aid highways in accordance with the Act. For the failure to do so, the states are *subject to a penalty of 10 percent of the federal-aid highway funds*. 23 U.S.C. 131(b)(1). The North Carolina General Assembly passed the "Outdoor Advertising Control Act" in order to comply with the federal law.

The North Carolina Outdoor Advertising Control Act was ratified

by the General Assembly on July 6, 1967. Chapter 1198, 1967 Session Laws. Except for "on premises signs" and "for sale" signs, it prohibits outdoor advertising within 660 feet of the right of way of interstate and federal-aid primary highways except in commercial and industrial areas. Section 16 of the Act provides that the Act is effective upon ratification. Section 15 of the Act, codified as G.S. 136-140, provides that the Commission shall not be required to expend any funds for the regulation of outdoor advertising under this Article, nor shall the provisions of this Article, with the exception of G.S. 136-138 hereof, have any force and effect "*until Federal funds are made available to the State*" for the purpose of carrying out the provisions of this Article, and the Commission has entered into an "*agreement with the Secretary of Transportation*" as authorized by G.S. 136-138 and required by the Highway Beautification Act of 1965. The Highway Beautification Act required the State and the Secretary to agree on the definition of unzoned commercial and industrial areas and standards for size, spacing and lighting.

It is the general rule that where an act is clothed with all the forms of law and is complete in and of itself, it is fairly within the scope of the legislative power to prescribe that it shall become operative only on the happening of some specified contingency, contingencies or succession of contingencies. Such a statute lies dormant until called into active force by the existence of the conditions on which it is intended to operate. 16 C.J.S. Constitutional Law, §141, page 676; 11 Am. Jur. Constitutional Law, §216, page 926. The North Carolina Outdoor Advertising Control Act was complete in and of itself upon ratification on July 6, 1967. With the exception of G.S. 136-138 (which authorized agreements with the Secretary of Transportation), the provisions of the Act were not operative until the contingencies set out in the Act had occurred, *i.e.*, (1) an agreement with the Secretary of Transportation, and (2) federal funds made available to the State for the purpose of carrying out the provisions of the article. The first contingency, which was the entering into an agreement between the State Highway Commission and the Secretary of Transportation had occurred on January 31, 1972. A question is raised as to the time of the occurrence of the second contingency—the availability of federal funds to the State for the purpose of carrying out the provisions of the Act.

An agreement, pursuant to G.S. 136-138 and 23 U.S.C. 131(d), defining unzoned commercial and industrial areas and providing for standards, was signed on behalf of the State Highway Commission and the Federal Highway Administration. The Federal Highway Administrator transmitted the executed agreement to the State Highway Administrator by letter of January 31, 1972, advising as follows:

"Concerning the effective date of the Agreement and the availability of funds to carry out the provisions of Section 131, Title 23 U.S.C., this is to advise that such '*funds are now available to the State and may be requested*' as set forth in FHWA Notice of February 9, 1971, copy enclosed. For this reason, we consider that the Agreement is effective as of the date of this letter." (Emphasis added)

By letter of July 17, 1972, from the Division Right of Way Engineer for FHWA to the State Highway Administrator, FHWA advised as follows:

"We have been advised that *the Washington Office has allocated \$500,000 in Title I Highway Beautification Funds 649 to the State for control of outdoor advertising. Washington also has granted obligational authority in this amount to North Carolina* for use in fiscal year 1973." (Emphasis added)

The first status report of federal-aid highway funds received by the State Highway Commission indicating advertising control funds was as of July 31, 1972, in the form of a computer printout. It indicated advertising control funds in the amount of \$500,000 apportioned to North Carolina.

The Highway Beautification Act of 1965 contains a provision that the chapter relating to the obligation, period of availability, and expenditure of federal-aid primary highway funds shall apply to the outdoor advertising control funds authorized to be apportioned to carry out the Outdoor Advertising Control Act after June 30, 1967. 23 U.S.C. 131(m). 23 U.S.C. 118 provides that on and *after the date that the secretary has certified to each State Highway*

Department the sums apportioned to each federal-aid system or part thereof pursuant to an authorization under this title, or under prior acts, such sums shall be available for expenditure under the provisions of this title.

In the interpretation of statutes, the legislative intent constitutes the law. In seeking the legislative intent, a construction which will operate to defeat or impair the object of the statute should be avoided if the Court can reasonably do so without violence to the legislative language, and, where possible, the language of the statute will be interpreted so as to avoid an absurd consequence. *State v. Miller*, 282 N.C. 633, 640.

At the time of the enactment of the North Carolina Outdoor Advertising Control Act on July 6, 1967, Congress (in 1965) had authorized funds for appropriation for fiscal years ending June, 1966, and June, 1967, for carrying out the "Highway Beautification Act". However, the "Highway Beautification Act" was controversial and Congress did not fund the program for fiscal year ending June, 1968, nor fiscal year ending June, 1969. For fiscal year ending June 30, 1970, only \$2,000,000 was authorized by Congress for appropriation. See 23 U.S.C. 131(m). It was for this reason that the contingency provisions of G.S. 136-140 were included in the North Carolina Outdoor Advertising Control Act.

Federal funds for control of outdoor advertising control were not apportioned to North Carolina until the State Highway Administrator was notified by the letter of July 17, 1972, that \$500,000 had been allocated to the State for the control of outdoor advertising. The letter stated that "Washington has also granted obligational authority in this amount to North Carolina for use in fiscal year 1973." The FHWA notice of February 9, 1971, set out the manner in which funds' allocation and distribution of allocation of authority will be handled. It provided that "upon receipt of notice that obligational authority has been received and funds allocated, the State shall proceed with project submission and approval in the regular manner."

When subjected to the rules of statutory construction heretofore referred to, it is the opinion of this Office that the legislature, in using the term "until federal funds were made available for the

expenditure for the purpose of carrying out the provisions of this Act", intended to provide that the provision of the Act would not become operative "until federal funds are apportioned and made available to the State of North Carolina for obligational authority." This took place on July 17, 1972. All of the contingencies for making the provisions of the "Outdoor Advertising Control Act" operative had then occurred. Federal funds were not made "available" by the letter of January 31, 1972, from the Federal Highway Administration as contemplated by G.S. 136-140.

The State Highway Commission, on March 2, 1972, adopted *ordinances regulating the size, lighting and spacing and defining unzoned commercial and industrial areas* as set out in the agreement between the State Highway Commission and the Federal Highway Administration. The ordinance provided that the standards "apply only to those signs erected in zoned or unzoned commercial or industrial areas after March 2, 1972." These were filed with the Secretary of State on March 17, 1972.

At the October 5, 1972, State Highway Commission meeting, the Commission adopted the following ordinance:

"The effective date for the *enforcement of the standards* contained in the ordinance adopted by the State Highway Commission on March 2, 1972, for the control of outdoor advertising on Federal-aid interstate primary highways, is hereby changed to October 15, 1972."

The regulations of October 5, 1972, relating to the enforcement of the standards in *industrial and commercial areas* adopted by the State Highway Commission on March 2, 1972, were not filed with the Secretary of State until November 2, 1972. Regardless of the effect of the change of the date of the enforcement by the State Highway Commission of the standards applied to billboards in industrial and commercial areas, the State Highway Commission could not by ordinance change the date of the operation of the statute as specified by the Legislature. 1 Strong, North Carolina Index 239. When it became operative, the erection of billboards within 660 feet of the right of way of Federal-aid primary highways, except in commercial and industrial areas, was prohibited.

Robert Morgan, Attorney General
Eugene A. Smith,
Assistant Attorney General

- - -

4 June 1973

Subject: Taxation; Privilege Licenses; Faith Healers;
G.S. 105-41; Exemptions

Requested by: Mr. John R. Parker
County Attorney, Sampson County

Questions: (1) Are faith healers considered "Persons practicing any professional art of healing for fee or reward" within the purview of G.S. 105-41?

(2) If faith healers qualify for an exemption from the payment of the State license tax under G.S. 105-41(b), is the right of the county to levy a tax revived?

Conclusions: (1) Faith healers are considered "Persons practicing any professional art of healing for fee or reward" within the purview of G.S. 105-41.

(2) If faith healers qualify for an exemption from the payment of the State license tax under G.S. 105-41(b), the right of the county to levy a tax is not revived.

"Faith healer" is defined in a 23 September 1971 Attorney General opinion as "One who practices faith healing (faith healing, a method or practice of treating diseases by prayer and exercise of faith in God)."

The terminology as set forth in G.S. 105-41, "any person practicing

any professional art of healing", appears to be broad enough to include "one who practices faith healing". Therefore, if the faith healer receives a fee or reward, then it follows that he comes within the purview of G.S. 105-41.

North Carolina G.S. 105-41 provides that:

" . . . any person practicing any professional art of healing for a fee or reward . . . shall apply for and obtain from the Commissioner of Revenue a statewide license for the privilege of engaging in such business or profession, or the doing of the act named, and shall pay for such license twenty-five dollars (\$25.00)."

In order for persons to meet the statutory requirements of G.S. 105-41(b) to qualify for the exemption from the payment of the license tax levied, they must be "Persons practicing the professional art of healing for a fee or reward . . . if such persons are adherents of established churches or religious organizations and confine their healing practice to prayer or spiritual means."

G.S. 105-41(h) states that:

"Counties, cities, or towns shall not levy any license tax on the business or professions taxed under this section; and the statewide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city or town in this State."

Therefore, under G.S. 105-41(h), the County of Sampson would be barred from levying any license tax in the event that such person paid the statewide license provided by the statute.

G.S. 105-41 was first enacted in 1939, but section (b) of G.S. 105-41, which exempts from the payment of the license tax persons practicing the professional art of healing for a fee or reward who are adherents of established churches or religious organizations, was not inserted into the law until 1957.

It is apparent that the statute, as originally enacted, intended to

The introduction of section (b) into G.S. 105-41(b) did not intend to revive the right of the county to levy a license tax upon those persons designated by the statute, notwithstanding the State's granting an exemption under section (b). A person may be both taxed and exempted from that tax under different sections of the same statute. In order for each section of the statute to be applied in a consistent manner and to fulfill its original intent, the term "taxed" in G.S. 105-41(h) must mean "subject to taxation". The right of the county to levy a tax is not revived because the profession continues to be "subject to taxation" although that particular profession is granted an exemption from payment of the tax.

Also, if the faith healer qualifies for the exemption from paying the license tax as set forth in G.S. 105-41(b) and does not pay the tax to the State, Sampson County is not entitled to levy a tax because there is no provision in G.S. 105-41 granting the County the right to levy a license tax.

Therefore, faith healers are considered "Persons practicing any professional art of healing for fee or reward" within the purview of G.S. 105-41, and if faith healers qualify for an exemption from the payment of the State license tax under G.S. 105-41(b), the right of the County to levy a tax is not revived.

Robert Morgan, Attorney General
Norman L. Sloan,
Associate Attorney

— — —

7 June 1973

Subject: > Licenses and Licensing; Real Estate
Licensing Board; Educational Requirement
for Broker's Examination; G.S. 93A-4(a)

Requested by: Mr. Joseph F. Schweidler,

Secretary-Treasurer
North Carolina Real Estate Licensing Board

Question: Under authority of G.S. 93A-4(a), does the North Carolina Real Estate Licensing Board have authority to require that applicants for broker's license have successfully completed a sixty hour course of study in a Board approved school?

Conclusion: No. G.S. 93A-4(a) does not authorize the Board to set any specific number of hours of a course of study in real estate transactions as equivalent to six months' experience in real estate transactions. However, the Board has wide latitude in determining what constitutes the equivalent of six months' experience in real estate transactions.

G.S. 93A-4(a) provides in part:

"Each applicant for a license as a real estate broker shall have been actively engaged as a licensed real estate salesman in this State for at least six months prior to making application for a license as a real estate broker, or shall furnish evidence satisfactory to the Board of experience in real estate transactions or the completion of a study or a combination of experience and study of real estate transactions which the Board shall find equivalent to such six months experience as a licensed real estate salesman."

As of May 17, 1973, there were 84 schools (including several correspondence schools located outside the State) offering courses in real estate transactions, which courses the Board had previously approved. Once a course of study has been approved by the Board, any applicant to take the broker's examination who is otherwise qualified and who has successfully completed such course of study, as certified by the school to the Board, is permitted to take the broker's examination. The number of hours of instruction offered

by these 84 schools varies widely. While most offer 30 hours of instruction, several offer more, one course involving 240 hours of instruction.

The Board has previously adopted a "suggested curriculum" for schools offering courses in real estate transactions. This curriculum consists of a total of 30 hours of instruction. However, the Board now believes, according to its letter of inquiry to the Attorney General, that "Experience has shown that a thirty hour course is just not sufficient to prepare applicants for the broker examination."

It is significant that G.S. 93A-4(a) does not even require an applicant to take the broker's examination, to attend a school or complete any specific course of instruction. Therefore, the Board, in our opinion, has no authority to arbitrarily require an applicant to successfully complete a sixty hour course in real estate transactions, or any specific number of hours for that matter.

In view of the fact that 84 schools are offering courses in real estate transactions, in our opinion the Board has a duty to evaluate each school and determine whether, in the Board's opinion, the school is offering a course of study which is equivalent to six months' experience in real estate transactions. Such an evaluation can, of course, include the number of hours of instruction, but this cannot be the only criteria involved. Other criteria which the Board may wish to include are the professional background and experience of the instructors, the courses offered and the passing-failing experience of the school's previous graduates who have taken the broker's examination.

In view of the very broad language of G.S. 93A-4(a), the Board could, in its discretion, permit an applicant to take the broker's examination who certifies to the Board that he has studied a recognized text in real estate transactions, provided the Board determines that a study of such text is equivalent to six months' experience as a licensed salesman.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

7 June 1973

Subject: Mental Health; Confidentiality of Hospital Records; Release of Medical Records to a Former Patient

Requested by: Mr. R. Patterson Webb
Assistant Commissioner for Administration
North Carolina Department of Mental Health

Question: Do the statutes of the State of North Carolina prohibit the superintendent of a mental hospital operated by the State from releasing to a former patient information from that patient's medical records upon request from the patient for this information?

Conclusion: The statutes of the State of North Carolina do not prohibit the superintendent of a mental hospital operated by the State from releasing to a former patient information from that patient's medical records upon request from the patient for this information.

The General Assembly of North Carolina has dealt with the subject of disclosure of information and records in State mental hospitals in the following fashion:

"G.S. 122-8.1. *Disclosure of information, records, etc.*—No superintendent, physician, psychiatrist or any other officer, agent or employee of any of the institutions or hospitals under the management, control and supervision of the North Carolina State Department of Mental Health shall be required to disclose any information, record, report, case history or memorandum which may have been acquired, made or compiled in attending or treating an inmate or

patient of said institutions or hospitals in a professional character, and which information, records, reports, case histories and memorandums were necessary in order to prescribe for or to treat said inmate or patient or to do any act for him in a professional capacity unless a court of competent jurisdiction shall issue an order compelling such disclosure: Provided that where a person or persons are defendants in criminal cases and a mental examination of such defendants has been ordered by the court, the North Carolina State Department of Mental Health through its agents and officers may transmit the results or the report of such mental examination to the clerk of said court and to the solicitor or prosecuting officer and to the attorney or attorneys of record for the defendant or defendants."

While it is not uncommon to hear this section of the General Statutes described as *prohibiting* the release of information from hospital records other than upon court order, it is clear that that is not a correct interpretation of the test thereof. Quite to the contrary, aside from the proviso dealing with defendants in criminal cases, it is obvious that this statute was designed to make the disclosure of the contents of hospital records a discretionary matter with the superintendent or other official involved in instances where disclosure of the information has not been compelled by virtue of a court order. It might be assumed that the purposes behind this law were to protect the individual patients from unwarranted invasion of their privacy, to foster the therapeutic treatment plan of the patient involved by virtue of establishing a confidential doctor-patient relationship, and to protect the hospital personnel from the danger of numerous and spurious damage suits by patients in the hospitals.

Thus, when the literal wording of G.S. 122-8.1 is examined and the purposes for which it was designed are recognized, it is immediately apparent that there is no absolute prohibition upon the release of information from a former patient's hospital records to the former patient, his attorney, guardian or other legal representative.

By way of addendum, however, it might be added that, in the absence of a court order, the determination as to the proper disposition of a request for information from hospital records might well depend upon a number of factors. Included therein would be the nature of the information requested, the identity and purpose of the requestor, the impact that the release of this information might have upon the doctor-patient relationship, if such still exists, and the possibly deleterious effect that the release of this information to the patient might have upon the patient. Additionally, the fact that this information or the document containing it has previously been furnished to the individual or his legal representative may well be considered in deciding whether to accede to or deny the request. Therefore, in cases of this sort, the request should be considered and acted upon in accordance with the circumstances of the particular situation involved. Nothing in this opinion should be construed as indicating that the North Carolina Department of Mental Health is precluded from establishing appropriate general policies on this subject within the limitations of G.S. 122-8.1.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

7 June 1973

Subject: Social Services; Housing; Authority of
County Department of Social Services to
Contract With HUD for Rental Assistance
Experiment

Requested by: Honorable Harris J. Winkelstein
Area Counsel
Department of Housing and Urban
Development

Questions: (1) Can a social service agency of a
county of the State of North Carolina

contract with the United States acting by HUD for the provision of rental assistance under Section 23 of the United States Housing Act of 1937 so that the agency may obtain funds from HUD and distribute them to eligible recipients who would use the money to pay rents for accommodations which they have themselves found?

(2) If a social service agency of a county of the State of North Carolina can so contract with HUD, can that social service agency distribute the funds received from HUD to non-welfare recipients as well as those who receive welfare assistance?

Conclusions:

(1) Upon authorization by the board of county commissioners, a social service agency of a county of the State of North Carolina can contract with the United States acting by HUD for the provision of rental assistance under Section 23 of the United States Housing Act of 1937 so that the agency may obtain funds from HUD and distribute them to eligible recipients who would use the money to pay rents for accommodations which they have themselves found.

(2) A social service agency of a county of the State of North Carolina who has so contracted with HUD can distribute the funds received from HUD to non-welfare recipients as well as those who receive welfare assistance.

These two questions have arisen because of a proposed experiment by the United States Department of Housing and Urban Development. With regard to the federal law, the experiment is authorized by the Housing and Urban Development Act of 1970

(12 U.S.C. 1701, *et seq.*), and the United States Housing Act of 1937 (42 U.S.C. 1421, *et seq.*). The first of the cited federal statutes constitutes the basic authority of HUD in this area of operations and the second authorizes HUD to utilize low rent housing funds for the purpose of enabling low income families to rent standard dwelling units in private accommodations.

More specifically, 12 U.S.C. 1701z-3(c) authorizes HUD ". . . to contract with public or private organizations to provide the services required in the selection of families of low income for the distribution of monthly housing allowance payments." However, in order for the low rent funds to be used for the actual rental payments, HUD can only contract with a "public housing agency", which 42 U.S.C. 1402 (11) defines as ". . . any State, county, municipality, or other governmental entity or public body . . . which is authorized to engage in the development or administration of low rent housing or slum clearance".

Various levels of government in different geographic areas utilizing diverse agencies have been selected to participate in this experiment. Durham County acting through the county "welfare department" is one of the selected participants. Thus, the necessity has arisen to determine the ability of the county and its department of social services to perform the proposed functions.

In addressing the two questions posed, three sections of the General Statutes of North Carolina form the foundation for the conclusions arrived at in this opinion. The first of these sections, G.S. 153-152 (which is found in Article 13, entitled "County Poor"), provides *inter alia* that:

"The board of commissioners of each county is authorized to provide by taxation for the maintenance of the poor, and *to do everything expedient for their comfort and well-ordering.*" (Emphasis supplied)

The second pertinent section of the General Statutes is G.S. 108-15 which includes among the duties and responsibilities of the county board of social services the following:

"(5) To have such other duties and responsibilities

as the General Assembly or the State Board of Social Services or *the board of county commissioners may assign to it.*" (Emphasis supplied)

The third significant statutory provision is found in G.S. 108-19 which prescribes the duties and responsibilities of the county director of social services. Included among the requirements levied upon the director is a duty:

"(4) To administer funds provided by the Board of Commissioners for the care of indigent persons in the county under policies approved by the county board of social services."

Search of the General Statutes of North Carolina, including but not limited to Chapter 157, does not disclose any prohibition upon the proposed activities by the county department of social services in dispensing the federal funds upon due authorization by the board of county commissioners and under the supervision of the county board of social services. Thus, if such authorization is obtained, the Durham County Department of Social Services may properly participate in this experiment and would not be limited to distributing the funds so received solely to welfare recipients.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

- - -

7 June 1973

Subject: Taxation; Collection of City Taxes;
Municipal Policemen; Service of Notice of
Attachment and Garnishment; G.S.
105-368(b); Powers and Duties of
Policemen; G.S. 160A-285

Requested by: Mr. J. Troy Smith, Jr.
City Attorney

City of Havelock

Question: May a municipal policeman serve the Notice of Attachment and Garnishment for the collection of city taxes pursuant to the provisions of G.S. 105-368(b)?

Conclusion: A municipal policeman may serve the Notice of Attachment and Garnishment for the collection of city taxes pursuant to the provisions of G.S. 105-368(b), within the limits of the municipality.

G.S. 105-368(b), the ad valorem tax statute dealing with the procedure for attachment and garnishment, reads in part as follows:

"To proceed under this section, the tax collector shall serve or cause to be served upon the taxpayer and the person owing or having in his possession the wages, rents, debts, or other property sought to be attached a notice as hereinafter provided, which notice may be served by any deputy or employee of the tax collector *or by any officer having authority to serve summonses. . . .*" (Emphasis added)

It appears to be clear that if any officer has authority to serve summonses, then he has authority to serve the Notice of Attachment and Garnishment. This authority to serve process is granted by G.S. 160A-285 which states in part that:

"As a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. *He shall also have power to serve all civil and criminal process that may be directed to him by any officer of the General Court of Justice. . . .*" (Emphasis added)

It should be pointed out that a municipal policemen's powers are limited to the corporate limits of the city and that he may serve only those civil and criminal processes directed to him by an officer

of the General Court of Justice.

Therefore, in light of G.S. 105-368(b) and G.S. 160A-285, a municipal policeman may serve the Notice of Attachment and Garnishment for the collection of city taxes.

Robert Morgan, Attorney General
Norman L. Sloan,
Associate Attorney

- - -

11 June 1973

Subject: Drugs; Confidentiality of Drug Abuse
Patient Treatment and Rehabilitation
Records

Requested by: Mr. James R. Thompkins
Governor's Advocacy Commission on
Children and Youth

Question: Are physicians treating drug dependent
youths in local hospitals required to
disclose pertinent facts related to such
treatment to law enforcement agents?

Conclusion: Under North Carolina law, physicians in
North Carolina who are treating drug
dependent individuals are not allowed to
disclose the name or the individual who is
receiving the treatment to any law
enforcement officer or agency.

North Carolina General Statute 90-109.1(a) states:

"A person may request treatment and rehabilitation
for drug dependence from a practitioner, and such
practitioner or employees thereof shall not disclose the

name of such person to any law-enforcement officer or agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. A practitioner may undertake the treatment and rehabilitation of such person or refer such person to another practitioner for such purpose and under the same requirement of confidentiality."

According to North Carolina General Statute 90-87(13) drug dependence is defined as follows:

"'Drug dependent person' means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from use of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence."

According to North Carolina General Statute 90-87(22), practitioner is defined as follows:

"a. A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

"b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State."

Therefore, in order to have G.S. 90-109.1 become effective, the following conditions must be met:

1. A drug dependent individual (as defined in §90-87(13))
2. Must request treatment or rehabilitation
3. From a practitioner (as defined in §90-87(22))

Each case must be handled on an individual basis. The practitioner (usually in this case the practitioner will be either a physician or a hospital) must determine whether the individual is drug dependent. If the practitioner determines that the individual is drug dependent and that the individual is seeking treatment and rehabilitation, then under §90-109.1(a) the practitioner shall not disclose the name of such drug dependent individual to any law enforcement officer or agency.

Under §90-109.1(a) it would be improper for a practitioner to make a rule that all individuals seeking treatment or rehabilitation for a drug problem would be reported to a law enforcement officer or agency. Contrariwise, it would also be improper for a practitioner to make a rule that all individuals seeking treatment and rehabilitation for a drug problem would not be reported to a law enforcement officer or agency.

So long as an individual is drug dependent (as defined in §90-87(13)) and is seeking treatment and rehabilitation from a practitioner (as defined in §90-87(22)), then under G.S. 90-109.1 the practitioner is not allowed to disclose the name of that individual to any law enforcement officer or agency.

Another statute also must be considered in this context. That is G.S. 8-53 which states:

"No person, duly authorized to practice physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon: Provided, that the court, either at the trial or prior thereto, may compel such disclosure, if in his opinion the same is necessary to a proper administration of justice."

Under this statute a physician is not allowed to divulge information of a professional nature which he has acquired while treating a patient. It would appear, therefore, that a physician treating an individual for any malady, including drug abuse, could not under the statute, G.S. 8-53, disclose any information incident to such treatment. Therefore, if the practitioner involved in treating an individual for drug abuse is a physician, then the information incident to such treatment could not be disclosed.

You mention in your letter the possibility of a conflict between federal and State law in the confidentiality area. The United States Congress addressed itself to the question of confidentiality of drug abuse patient records in 21 U.S.C. §1175. This Office is not in a position to officially interpret federal statutes. However, it is our impression, under 21 U.S.C. §1175 and §401.01 and §401.02 of Title 21, Chapter 3 of the Code of Federal Regulations, as published in Volume 37, No. 223 of the Federal Register on Friday, November 17, 1972, that a hospital in North Carolina would not come under the requirements of the federal statute unless that hospital was engaged primarily in a drug abuse prevention function.

In those cases where, however, the federal confidentiality statute would be effective, it is possible that there could be a conflict with §90-109.1 in that the federal statute could require the confidentiality whereas the State statute would not require the confidentiality. In this case, the practitioner involved could, of course, maintain the confidentiality as required under the federal law. This is due to the fact that §90-109.1 of the State law merely requires that a practitioner *not* disclose the information; it does not require at any time that a practitioner disclose the information.

Robert Morgan, Attorney General
Henry Poole,
Associate Attorney

- - -

19 June 1973

Subject: Infants and Incompetents; Child Day-Care

Facilities; Child-Staff Ratio; G.S. 110-91

Requested by: Mr. John S. Sokol
Director, Office of Child Day-Care
Licensing

Question: Are the child-staff ratio requirements set out in G.S. 110-91(7) applicable during all periods of the day, or is less supervision necessary during rest periods, affording members of the staff a period during which they may have a break or lunch?

Conclusion: The child-staff ratio requirements set out in G.S. 110-91(7) are applicable during all periods of the day until such time as these requirements are made less stringent by the Child Day-Care Licensing Board.

G.S. 110-88(5) gives the Child Day-Care Licensing Board the authority to make rules and regulations for the purpose of implementing the Child Day-Care Licensing laws. G.S. 110-88(7) gives the Board the authority to issue two grades of licenses for the operation of a child day-care facility: an "A" license for compliance with Article 7 of Chapter 110 of the General Statutes, and an "AA" license for compliance with higher standards of day care which the Board is authorized to develop.

G.S. 110-91 contains the mandatory standards for a license to operate a day-care facility relating to the health and safety of the children involved. G.S. 110-91(7) sets out the guidelines which the Child Day-Care Licensing Board shall use in adopting rules and regulations regarding child-staff ratios. The language of this section is phrased in terms of what the ratio of staff members to children *shall* be in facilities of given sizes and in terms of how many staff members there *must* be for a given number of children. For purpose of interpretation, however, the pertinent portion of G.S. 110-91(7) is the second sentence, which reads in part as follows:

"The Board shall adopt rules and regulations regarding child-staff ratio, provided, however, that such rules and

regulations shall in no event require a ratio of staff members to children more stringent than the following:"

The standards for child-staff ratio set out in G.S. 110-91(7) are, therefore, intended as maximum standards for qualification for an "A" license, although presumably the Board could adopt a more stringent standard as a qualification for an "AA" license. The use of the terms "shall" and "must" in describing the ratios is not meant to convert what was intended as maximum ratios into minimum ratios. Instead, these terms were used to indicate the guidelines which the Child Day-Care Licensing Board should follow in adopting its rules and regulations with respect to child-staff ratios. Within these guidelines, certain variations of the specified ratios may be allowed for different periods of the day, such as rest periods, if the Board determines that the children need less supervision during these periods.

It is clear, then, that the Child Day-Care Licensing Board may, in its discretion, adopt rules and regulations requiring a different child-staff ratio for daily rest periods and for the periods when the children are engaged in their daily activities. To this date, however, the rules and regulations of the Child Day-Care Licensing Board have not been developed. In the absence of these rules and regulations, it can only be concluded that the standards set out in G.S. 110-91(7) are applicable during all periods of the day with no provisions for a less stringent ratio during rest periods.

Robert Morgan, Attorney General
Ann Reed,
Associate Attorney

- - -

19 June 1973

Subject: Courts; Suspended Sentence; Conditions

Requested by: Mr. Paul C. Harrington, Project Director
Charlotte-Mecklenburg Alcohol Safety
Action Project

Question: Can the court as a condition of a suspended sentence require that a defendant convicted of DUI or an alcohol related offense attend an Alcohol Driver Education School for which a tuition of \$25.00 to be paid by the defendant is required?

Conclusion: Yes, if the defendant agrees to and accepts such condition after being advised of the required \$25.00 tuition.

Under G.S. 15-197 the judge of any court of record with criminal jurisdiction may, with defendant's express or implied consent, suspend sentence upon prescribed conditions. *State v. Cole*, 241 N.C. 576, 86 S.E. 2d 203, (1955).

G.S. 15-199 empowers the court to determine and impose certain enumerated conditions of probation, or *any other* conditions. Case law provides the basic limitations upon the court's power to impose conditions of probation. The court has discretionary power to suspend sentences or judgment for a reasonable length of time upon reasonable conditions. Cases cited, note 49, 3 Strong's Index *Crim. Law* §142 (1967). There exists a presumption in favor of the reasonableness of the conditions of suspension. *State v. Smith*, 233 N.C. 68, 62 S.E. 2d 495 (1950).

The court has the express power to order a convicted defendant as a condition for suspended sentence to make restitution to the aggrieved party for damages or loss caused by his offense. G.S. 15-199(10). By analogy, it would seem the court could likewise impose conditions of rehabilitative education at cost to defendant, inasmuch as G.S. 15-199 provides for imposition of conditions other than those enumerated. The defendant could not be compelled to accept the suspended sentence with condition that he attend driver education school, as an overriding limitation upon judgment suspending sentence is the necessity of defendant's consent, express or implied.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

19 June 1973

Subject: Social Services; Adoptions; Necessity of Termination of Parental Rights to Dispense With Finding of Abandonment by the Clerk; Termination of Parental Rights Ordered Before or After Filing of Petition for Adoption

Requested by: Mrs. Robin L. Peacock, Supervisor of Adoptions
North Carolina Department of Social Services

Question: After a petition for adoption of a child has been filed, under what circumstances, if any, will a finding of abandonment or other finding by a district court obviate the necessity of a finding of abandonment by the court (*the clerk in adoption proceedings*) for the purposes of G.S. 48-5(a) and (b)?

Conclusion: Before or after a petition for the adoption of a child has been filed, only a finding of abandonment or other finding provided for by G.S. 7A-288, followed by a termination of parental rights, also under G.S. 7A-288, will suffice to obviate the necessity of a finding of abandonment for the purposes of G.S. 48-5(a) and (b).

G.S. 48-5(a) and (b) are as follows:

"(a) In all cases where a court of competent jurisdiction has declared a child to be an abandoned child, the parent, parents, or guardian of the person, declared guilty of such abandonment shall not be necessary parties to any proceeding under this Chapter nor shall their consent be required.

"(b) In the event that a court of competent jurisdiction has not heretofore declared the child to be an abandoned child, then on written notice of not less than 10 days to the parent, parents, or guardian of the person, the court in the adoption proceeding is hereby authorized to determine whether an abandonment has taken place."

Alluding to the references in G.S. 48-5(a) and (b) to a prior finding of abandonment, or lack of such finding, it is noted that G.S. 110-36, which was a part of Article 2 of Chapter 110 of the General Statutes entitled "Juvenile Courts" formerly provided that the juvenile court had "power to determine whether any such child is an abandoned child within the meaning and under the provisions of Chapter 48 of the General Statutes." This statutory provision was repealed by Session Laws 1969, Chapter 911, Section 1, and (except as set out in G.S. 7A-288 quoted in part below) was not included in Article 23 of Chapter 7A of the General Statutes in which the juvenile court statutes were recodified in 1969 and in which the handling of juvenile matters was assigned to the district court division of the General Court of Justice. It is also noted that Session Laws 1971, Chapter 1185, Section 17 deleted from G.S. 48-5(a), quoted above, after the word "jurisdiction", the words "including a juvenile or domestic relations court", and did not substitute any reference to the district court. Session Laws 1971, Chapter 1185, Section 17 also deleted from the end of G.S. 48-5(b), quoted above, the following:

"provided that if the child is under the jurisdiction and control of a juvenile court or a domestic relations court, such determination of abandonment shall be made only by that court having jurisdiction. . . ."

Again, no reference to the district court was substituted.

G.S. 7A-288, enacted in 1969, provides that "In cases where the court has adjudicated a child to be neglected or dependent, the court shall have authority to enter an order which terminates the parental rights with respect to such child if the court" makes one of several specified findings, one such possible finding being as follows:

"(1) That the parent has abandoned the child for six consecutive months prior to the special hearing in which termination of parental rights is considered or that a child is an abandoned child as defined by chapter 48 of the General Statutes entitled 'Adoption of Minors.'"

G.S. 7A-288 provides further, with regard to an order terminating parental rights, the following:

"Such an order terminates all rights and obligations of the parent to the child and of the child to the parent, arising from the parental relationship. *Such a parent is not thereafter entitled to notice of proceedings for the adoption of the child and has no right to object thereto or otherwise participate therein.*" (Emphasis added)

Although there are other statutes providing for findings of abandonment (G.S. 7A-278(4) providing that a neglected child includes one who has been abandoned, G.S. 50-7 providing that a divorce from bed and board may be granted "if either party abandons his or her family", and G.S. 14-322.1 making it a criminal offense for a person to abandon his children under certain circumstances), it does not appear that there are statutes other than G.S. 7A-288 providing specifically for a finding of abandonment within the meaning of G.S. 48-2(3a) and G.S. 48-2(3b).

G.S. 7A-288 is so worded as to make it clear that an action thereunder is for the termination of parental rights, and it does not appear that it is the sense of the statute as a whole that any findings therein, including a finding of abandonment, would have any legal effect unless an order terminating parental rights is entered.

It does not appear that G.S. 48-5 is so worded as to preclude a termination of parental rights under G.S. 7A-288 whether before or after a petition for adoption has been filed.

Robert Morgan, Attorney General
R. S. Weathers,
Assistant Attorney General

19 June 1973

Subject: Public Officers and Employees; Register of Deeds; Cancellation of Deeds of Trust; G.S. 45-37

Requested by: Mr. Carl L. Bailey, Jr.
County Attorney, Washington County

Questions: (1) When a note secured by a real estate deed of trust is assigned to the third party, and no assignment appears on the deed of trust itself or is of record, may the register of deeds cancel the deed of trust of record if satisfaction is entered only on the note by the assignee thereof and only on the deed of trust by the original obligee?

(2) In the same situation as (1) above, may cancellation be had if satisfaction is entered on both the note and the deed of trust by (a) the assignee, or (b) by the original obligee?

(3) Under G.S. 45-37(a)(2) is it necessary that both note and deed of trust be marked satisfied?

Conclusions: (1) The register of deeds has authority to cancel the deed of trust under this set of facts.

(2) The assignee may cancel the deed of trust.

(3) Yes, both.

With respect to Question (1), G.S. 45-37, which provides the method of discharge of record of mortgages, deeds of trust and other instruments, provides in subsection (a)(2) that a deed of trust may

be cancelled by the register of deeds:

"(2) By exhibition of any deed of trust, . . . accompanied with the . . . note . . . secured to the register of deeds, with the endorsement of payment and satisfaction appearing thereon by . . .

"d. An assignee of the mortgagee. . .

"Upon exhibition of the instruments, the register of deeds shall cancel the . . . deed of trust. . . by entry of satisfaction on the margin of the record."

This statute thus authorizes the register of deeds to cancel the deed of trust under the set of facts in Question (1).

With respect to Question (2), G.S. 45-37(a)(2)d. clearly provides that the assignee may cancel the deed of trust. However, there is no authority for the original obligee to cancel the deed of trust where there has been an assignee.

With respect to Question (3), the language of G.S. 45-37(a)(2) requires that both the deed of trust and the note be marked satisfied.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

19 June 1973

Subject: Social Services; Counties; Optional
Participation in General Assistance
Program; Authority of Social Services
Commission to Promulgate Rules for
General Assistance Program

Requested by: Dr. Renee Westcott
Commissioner

North Carolina Department of Social
Services

Question:

If a county elects to participate in the new Uniform General Assistance Program authorized by Part 6, Article 2, Chapter 108 of the General Statutes of North Carolina, is it required to participate in the entire program or may it participate in only the portions of the program pertaining to selected groups of individuals?

Conclusion:

If a county elects to participate in the new Uniform General Assistance Program authorized by Part 6, Article 2, Chapter 108 of the General Statutes of North Carolina, it is required to participate in the entire program unless contrary rules are promulgated by the Social Services Commission.

Legislation creating a new General Assistance Program was enacted by the 1973 General Assembly of North Carolina (Chapter 717 of the Session Laws of 1973). This program, which becomes operative on July 1, 1973, is best described by quoting the provisions of the rewritten G.S. 108-62:

"§108-62. *Purpose and eligibility.*--Assistance may be granted under this Part to persons who would have been eligible under the aid to the aged and disabled category prior to January 1, 1974, but who after such date do not qualify under the Federal Supplemental Security Income Program, including needy spouses, essential persons, certain disabled persons, and those persons needing supplemental payments in boarding homes, rest homes, and convalescent homes for the aged or infirm and those needing attendant care at home. Nothing in this Part should be interpreted so as to preclude any individual county from operating any program of financial assistance using only county funds."

G.S. 108-64(a) provides that the General Assistance Program is to be funded by appropriations made by the General Assembly and by grants from the federal government when such are available. It appears that this recent legislation was basically designed to provide assistance to a category of individuals no longer entitled to federally funded assistance. Therefore, as a practical matter, all indications are that, at least at the present time, the program will be funded by the State of North Carolina.

G.S. 108-65, as amended, makes it clear that county participation in the program is not mandatory but that ". . . no county shall be granted any allotment from the State General Assistance Fund nor be subject to the provisions of this part unless its consent be given in the manner prescribed by the rules and regulations of the State Board." While the statutes patently vest the option of participation in this program in the individual counties, the question has arisen as to whether this participation must be in the total General Assistance Program or whether a given county can elect to participate in a portion of the program but abstain from participation in other parts. Throughout all of the pertinent statutes the legislators have spoken in terms of one single, comprehensive program of general assistance. Repeated reference has been made to the "program" being created. See G.S. 108-64(b) and G.S. 108-65. This program is specifically designed to provide assistance to those who, prior to January 1, 1974, would qualify in the "aid to the aged and disabled category".

Of course, the Social Services Commission (effective July 1, 1973) will be authorized to promulgate rules and regulations governing the General Assistance Program. See G.S. 108-65 and Section 138, Chapter 476, Sessions Laws of North Carolina, 1973 Session. It would appear that it is within the rules making power of the Social Services Commission to provide for partial participation in the General Assistance Program by the counties if such is deemed to be desirable. Absent such implementing rules, the statutes afford each county the option of either full participation in the General Assistance Program or no participation therein.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

19 June 1973

Subject: Executions; Sheriffs; Service of Writ of Possession for Personal Property; G.S. 1-313(4)

Requested by: Mr. C. E. Drum, Jr.
Deputy Sheriff
Forsyth County

Questions: (1) In serving a writ of possession for personal property, as authorized by G.S. 1-313(4), must personal service be made on the judgment debtor?

(2) Does the officer serving a writ of possession for personal property have authority to break into or forcibly enter a building to levy on personal property under authority of Article 28, Chapter 1 of the General Statutes?

(3) If personal service of the writ of possession for personal property is made on the judgment debtor and he refuses to surrender possession of the property, what return should the officer make on the writ?

Conclusions: (1) No.

(2) No.

(3) Make the return that the defendant was personally served and refused to surrender the property.

With respect to Question (1), you can make service ". . . at the defendant's dwelling house, or usual place of abode with some person of suitable age and discretion then residing therein" Rule 4(j) Rules of Civil Procedure (G.S. 1A-1 Rule 4(j)). According to G.S. 1-303, an execution " . . . shall be deemed the process

of the court" If service is not made on the defendant, the process server should be careful to ascertain that service is had on a person of suitable age and discretion residing at the house or place of abode of the defendant.

With respect to Question (2), in *State v. Whitaker*, 107 N.C. 803, 12 S.E. 456 (1890) it was held by the North Carolina Supreme Court that " . . . an officer cannot break open an outer door or window of a dwelling against the consent of the owner for the purpose of making a levy on the goods of the owner.", relying on two earlier decisions of the court, *State v. Armfield*, 9 N.C. 246 and *Sutton v. Allison*, 47 N.C. 339. These decisions would be applicable irrespective of whether the defendant or someone else refused entry to the officer.

Robert Morgan, Attorney General
Millard R. Rich, Jr.,
Assistant Attorney General

- - -

19 June 1973

Subject:	Social Services; Executive Organization Act of 1973; Authority of Secretary of Human Resources to Assign Authority to Rule on Public Assistance Appeals
Requested by:	Mr. David T. Flaherty Secretary, North Carolina Department of Human Resources
Question:	Subsequent to July 1, 1973, may the Secretary of Human Resources delegate the decision making authority vested in him under G.S. 108-44 regarding appeals filed by public assistance applicants or recipients?
Conclusion:	Subsequent to July 1, 1973, the Secretary

of Human Resources may delegate the decision making authority vested in him under G.S. 108-44 regarding appeals filed by public assistance applicants or recipients.

G.S. 108-44 sets forth the procedures by which a public assistance applicant or recipient may appeal adverse action or non-action by a county board of social services or a board of county commissioners on his application for public assistance. In the present form, this section provides that the decision on an appeal of this nature will be made by the Commissioner of Social Services and the wording indicates that this is a personal, non-delegable responsibility.

However, the North Carolina General Assembly at its 1973 Session ratified the Executive Organization Act of 1973, which has an effective date of July 1, 1973. Section 138 of this Act, *inter alia*, amends G.S. 108-44 so as to substitute the Secretary of Human Resources for the Commissioner of Social Services as the individual vested with decision making authority.

On the other hand, though, Section 10 of the Act contains the following pertinent language bearing on the question posed:

"Sec. 10. *Powers and duties of heads of principal departments.*--(a) Assignment of functions.--Except as otherwise provided by this Chapter, the head of each principal State department may assign or reassign any function vested in him or in his department to any subordinate officer or employee of his department"

Literal reading of the broad, sweeping language of Section 10 of the Executive Organization Act of 1973 makes it patent that acting on the appeals in question is included within the functions which the Secretary may assign or reassign to any subordinate officer or employee of his department.

Robert Morgan, Attorney General
William F. O'Connell,
Assistant Attorney General

26 June 1973

Subject: Municipalities; Sanitary Districts; G.S. 30-128

Requested by: Mr. James A. Wellons, Jr.
Attorney, West Smithfield Sanitary District

Question: Does the West Smithfield Sanitary District constitute a municipality as defined by the United States Environmental Protection Agency?

Conclusion: A sanitary district duly created pursuant to the provisions of Article 12, Chapter 130, North Carolina General Statutes, is a municipality within the meaning of the term as defined in 40 C.F.R. 35.

By letter dated June 19, 1973, and attachments thereto, it was requested that this Office advise whether the West Smithfield Sanitary District is a municipality as that term is defined by the U. S. Environmental Protection Agency.

Although not stated in the request for opinion, it is assumed that the West Smithfield Sanitary District was duly created pursuant to the provisions of Article 12, Chapter 130, North Carolina General Statutes. G.S. 130-128 provides, *inter alia*:

"When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this Article shall be a *body politic and corporate* and as such may sue and be sued in matters relating to such sanitary district. In addition, such board shall have the following powers:

- (1) To acquire, construct, maintain and operate a sewerage system, sewage disposal or treatment plant, water supply system, water purification or treatment plant

and such other utilities as may be necessary for the preservation and promotion of the public health and sanitary welfare within the district, such utilities to be constructed, operated, and maintained in accordance with the rules and regulations promulgated by the State Board of Health."
(Emphasis added)

In § 35.905-9 of Part 35, Title 40 of the Code of Federal Regulations, promulgated February 28, 1973 in Volume 38, Number 39, of the Federal Register, the term "municipality" is defined as follows:

"A city, town, borough, county, parish, district (but excluding a school district), association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or pursuant to State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial waste, or other waste, or a designated and approved management agency under section 208 of the act."

It is concluded, therefore, that a sanitary district duly created pursuant to the provisions of Article 12, Chapter 130 of the North Carolina General Statutes is a municipality within the meaning of the above-quoted definition.

Robert Morgan, Attorney General
Henry T. Rosser,
Assistant Attorney General

- - -

29 June 1973

Subject: Administration of Estates; Assets; Fees;

Administrator; Joint Tenancy with Right of Survivorship; Joint Bank Accounts

Requested by: Honorable R. J. White, Jr.
Clerk of Superior Court, Northampton County

Question: In determining the assets of a decedent's estate and computing the costs of administration, what portion of the decedent's assets in the form of deposits in joint bank accounts should be included as assets of his estate subject to computation of costs of administration?

Conclusion: That portion of the unwithdrawn deposits which would have belonged to decedent had the deposits been divided equally with the other joint tenant or tenants at the time of decedent's death should be included as assets of his estate and would be subject to the computation of costs of administration.

The incidents of a joint tenancy with right of survivorship in bank accounts are governed by G.S. 41-2.1(a) which provides that such accounts may be entered into between any two or more persons pursuant to written agreement. The written agreement is normally printed on the signature card utilized by the bank for the account.

G.S. 41-2.1(b)(3) and (4) provide:

"(3) Upon the death of either or any party to the agreement, the survivor, or survivors, becomes the sole owner, or owners, of the entire unwithdrawn deposit subject to the claims of the creditors of the deceased and to governmental rights in that portion of the unwithdrawn deposit which would belong to the deceased had said unwithdrawn deposit been divided equally between both or among all the joint tenants at the time of the death of said deceased.

"(4) Upon the death of one of the joint tenants provided herein the banking institution in which said joint deposit is held shall pay to the legal representative of the deceased, or to the clerk of the superior court if the amount is less than one thousand dollars (\$1,000.00), in accordance with G.S. 28-68, the portion of the unwithdrawn deposit made subject to the claims of the creditors of the deceased and to governmental rights as provided in subdivision (3) above, and may pay the remainder to the surviving joint tenant or joint tenants. Said legal representative shall hold the portion of said unwithdrawn deposit paid to him and not use the same for the payment of the claims of the creditors of the deceased or governmental rights unless and until all other personal assets of the estate have been exhausted, and shall then use so much thereof as may be necessary to pay any remaining debts of the deceased or governmental claims. Any part of said unwithdrawn deposit not used for the payment of such debts or charges of administration of the deceased shall, upon the settlement of the estate, be paid to the surviving joint tenant or tenants."

While the ownership of joint bank accounts in their entirety is vested in the survivor or survivors pursuant to G.S. 41-2.1(b)(3), the statute is clear that that portion of the bank deposits which would have been payable to the decedent had the deposits been withdrawn prior to his death is required to be paid by the bank to the legal representative of the deceased. The funds are then to be held by the legal representative of the deceased and shall not be used to pay claims of creditors or to satisfy governmental rights until all other personal assets of the estate have been exhausted. The statute further clearly contemplates that charges of administration will be paid out of those funds delivered to the legal representative of the decedent prior to the payment of the unused portion thereof to the surviving joint tenant or tenants.

Therefore, the statute requires in every case that the decedent's share of the unwithdrawn joint bank account be paid to his legal

representative. When this requirement of the statute is complied with, the funds become assets of the estate of the decedent for the purpose of computing and paying the commissions of the legal representative, as well as the costs due the State pursuant to G.S. 7A-307.

Robert Morgan, Attorney General
Russell G. Walker, Jr.
Assistant Attorney General

- - -

29 June 1973

Subject: Criminal Law and Procedure; Drug
Conviction Record Expunction; G.S. 90-96
and 90-113.14

Requested by: Mr. Harvey D. Johnson
Assistant Clerk of Superior Court, Iredell
County

Question: Under G.S. 90-113.14 and G.S. 90-96 is it
legal to expunge a record if the defendant
was arrested before his twenty-second
birthday?

Conclusion: Yes.

G.S. 90-96 and G.S. 90-113.14 both provide record expunction for an individual "if he were not over twenty-one years of age at the time of the offense." The phrase "not over twenty-one years of age" clearly means that so long as the individual has not reached his twenty-second birthday, on the date of the offense, he is eligible for the record expunction. The term "twenty-one years of age" is construed in its usual manner in that the time period is up through the age of twenty-one and to the birth date at which time the individual becomes twenty-two years of age.

Therefore, it is the opinion of this Office that G.S. 90-96 and G.S.

90-113.14 allow record expunction for individuals meeting the qualifications and prerequisites set out in said statutes, so long as the individual has not reached his twenty-second birthday on the date of the offense for which record expunction is sought.

Robert Morgan, Attorney General
Henry E. Poole,
Associate Attorney

- - -

29 June 1973

Subject: General Assembly; Sessions; Board of
Transportation, Report

Requested by: Mr. Billy Rose
State Highway Administrator

Question: Is the Board of Transportation required by
the provisions of G.S. 136-12 to make a
highway construction and maintenance
report to the General Assembly when it
reconvenes in January 1974?

Conclusion: No. The provisions of G.S. 136-12 require
a report on highway construction and
maintenance to be made to the General
Assembly on or before the tenth day after
the convening of each *regular* session. The
session when the General Assembly
reconvenes in January 1974 will be the
same *regular session* that began in January
1973 and was adjourned in May until
January 16, 1974. Therefore, the report
>provided by G.S. 136-12 is not required to
be made when the General Assembly
reconvenes in January 1974.

G.S. 136-12 provides that on or before the 10th day after the

convening of *each regular session* of the General Assembly a report shall be made showing the highway construction and the maintenance work performed. Section 11 of Article II of the Constitution provides that the General Assembly shall meet *in regular session* in 1973 and every two years thereafter on the day prescribed by law. G.S. 120-11.1 provides that the *regular session* shall be held biennially beginning on the first Wednesday after the second Monday in January next after the election of the members of the General Assembly.

Section 20 of Article II of the Constitution provides that the two houses may jointly adjourn to any future day or other place. By Joint Resolution 116, the General Assembly, which convened in January 1973 as prescribed by law, adjourned on May 24, 1973, to reconvene on January 16, 1974. When the General Assembly reconvenes in January of 1974 pursuant to Resolution 116, the General Assembly will still be meeting in regular session that convened January 1973. The report as contemplated by G.S. 136-12 is required to be made the tenth day after the convening of the *regular session* in 1973 and of the *regular session* of the General Assembly convening every two years thereafter. Therefore, a report is not required by G.S. 136-12 of the Board of Transportation on highway construction and maintenance when the General Assembly reconvenes in January 1974.

Robert Morgan, Attorney General
Eugene A. Smith,
Assistant Attorney General

- - -

29 June 1973

Subject: Criminal Law and Procedure; Search and Seizure; Admissibility of Evidence Obtained Without Search Warrant on Basis of Consent; "Plain View" Doctrine or Search Incident to Arrest

Requested by: Mr. Jack N. Freeman,
Assistant Solicitor, 29th Solicitorial District

Question:

Defendant is arrested and taken to jail for public drunkenness. Another officer drives defendant's automobile in for storage. This officer sees some pills on the seat in a plastic bag. At the jail defendant consents to a search, whereupon an officer gets the pills and some marijuana that was not visible and that required a search.

(1) Must evidence obtained by a search without a warrant conducted upon consent of defendant be suppressed where the defendant was intoxicated?

(2) Is evidence obtained by search by consent properly suppressed where consent was obtained without defendant's having received *Miranda* warnings?

(3) Is evidence admissible under the "plain view" doctrine where an officer in the performance of official duty observes and seizes pills which can be positively identified as a controlled substance only upon further analysis?

(4) Where a motor vehicle is under the control of an officer for storage purposes subsequent to lawful arrest of the owner for unrelated criminal conduct, is evidence obtained from the car in the absence of the owner and without a search warrant admissible, such search constituting a search incident to arrest?

Conclusion:

(1) Consent to search waives the necessity of a search warrant and renders the evidence thus obtained competent. The mere fact of a defendant's intoxication at the time of consent does not render consent invalid *per se*.

(2) No. *Miranda* warnings prior to obtaining consent to search are not required to render the fruits of search admissible.

(3) Generally no, but in this fact situation, yes. Admissibility under the "plain view" doctrine is conditioned upon the officer's awareness upon sight (or other sense) that the object is contraband evidence or an instrumentality of a crime.

(4) No. Upon the facts search of an automobile incident to arrest has been upheld despite remoteness in time or absence of defendant. However, valid searches under such conditions seem to have arisen only when defendant was arrested while in or near his vehicle, or there was reason to believe a third person would intervene and interfere with evidence, etc.

In regard to conclusion (1), the mere fact of intoxication does not render consent invalid, so long as consent is intelligently and voluntarily given. *State v. Colson*, 274 N.C. 295, 307 (1968). In addition, consent must be unequivocal and specific, and free from coercion, duress or fraud. *State v. Little*, 270 N.C. 234, 239 (1967). The burden is on the State to establish by clear and positive testimony that consent was given. *State v. Little, supra, cf State v. Vestal*, 278 N.C. 561, 579, (1971) (dictum to the effect that a motion to suppress evidence arising out of consensual search is properly overruled where a statement under oath of the voluntariness of the consent is not contradicted or denied. Note that this case also stated a presumption against the waiver of constitutional rights). Irrespective of the burden of establishing valid consent, the trial judge's finding on the nature of the consent is conclusive if supported by sufficient evidence. *State v. Little, supra*, at 240.

More explicit standards for determination of what constitutes a giving of consent through exercise of free will and rational intellect

were not found; therefore, reference is made to tests of capacity of one intoxicated to give a confession. By analogy, such tests that bear on determination of free will and rational intellect could be applied to determine validity of consent to search. Judgment must be critically impaired to render confession made by one intoxicated involuntary. Drunkenness without disorientation as to time or place or circumstances militates toward admissibility of confessions, as does defendant's conduct which evidences an exercise of free will and rational intellect. *Loyner v. N.C.*, 260 F.Supp. 970, (1966), 59 A.B.A.J. 497 (1973). It is to be noted that these tests as applicable to voluntariness of confession may be theorized to test capacity to tell the truth or to afford the protection of due process. The use of these standards as tests of valid consent to search is correct by analogy only to the extent the theory of use is related towards affording due process.

In regard to conclusion (2), non-necessity of *Miranda* warnings for valid consent to search is supported by *State v. Vestal*, *supra*, at 579, *State v. Virgil*, 276 N.C. 217 (1969), and cases cited in 2 Strong's Index *Crim. Law* §84 (Supp. 1971).

In regard to conclusion (3), where evidence obtained was within "plain view" of an officer in discharge of official duty, the taking of such evidence is regarded as a seizure alone, and the constitutional safeguards against unreasonable search are not applicable. Neither search nor exploratory investigation may be made without a warrant. *State v. Colson*, *supra*, at 307. It has been suggested that though the object is observed in "plain view", the doctrine will not justify seizure of the object where the incriminating nature of the object is not apparent from the "plain view" of the object. Annot. 29 L.Ed. 2d 1073. North Carolina has admitted blood stained clothing seized while in "plain view", though it is doubtful the clothing was incriminating on its face.

State v. Colson, *supra*. In *State v. Harvey*, 281 N.C. 1 (1972), an officer made a valid seizure of what later turned out to be marijuana seeds. Under the facts set out for this opinion, it is arguable that an experienced officer can observe seeds or pills as contraband, especially considering color codes, mixtures, type of container, etc.

With respect to conclusion (4), evidence taken upon searches of

automobiles has been held admissible as having been taken by search incident to arrest in numerous cases where the defendant had been removed from the scene, or at a time and place remote to arrest. Annot. 10 A.L.R. 3d 314; Annot. 19 A.L.R. 3d at 754. The common denominators of these cases have been the necessity of postponing search until the car is removed to a safer place, continuity of search from a point in time substantially contemporaneous with arrest, where the car was identified as the suspect's car at a time subsequent to his arrest or upon suspected presence of accomplice in area. It would seem that the absence of any of these factors, along with the absence of the basic justifications of search incident to arrest--danger to officer and possible loss of evidence--would militate against application of the search incident to arrest doctrine to the facts as set out for this opinion. See also Annot. 23 L.Ed. 2d 966.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

29 June 1973

Subject: Public Officers and Employees; Courts;
Clerk of Superior Court; Filling Vacancy;
Appointment of Acting Clerk; G.S. 7A-100

Requested by: Honorable Robert D. Rouse,
Resident Superior Court Judge, Pitt
County

Question: Where the office of clerk of superior court becomes vacant by reason of death or resignation and the resident judge, pursuant to G.S. 7A-100, has appointed an acting clerk for a period not longer than 30 days, may the resident judge appoint the acting clerk for an additional 30 days if the successor clerk has not been appointed to fill the vacancy?

Conclusion: No.

Section 9(3) of Article IV of the North Carolina Constitution provides that if the office of the clerk of superior court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior resident judge of the superior court serving the county shall appoint to fill the vacancy until an election can be regularly held. G.S. 7A-100 contains the same language found in the Constitution, but G.S. 7A-100(a) was amended by Chapter 240, Session Laws of 1973 to read:

"In cases of death or resignation of the clerk, the senior regular resident superior court judge, pending appointment of a successor clerk, may appoint an acting clerk of superior court for a period of not longer than 30 days."

Thus it appears to be the legislative intent that an acting clerk shall not serve for a period longer than 30 days from his appointment and that during this 30-day period, the senior regular resident judge of the superior court would appoint a successor clerk to serve until an election can be regularly held.

Robert Morgan, Attorney General
James F. Bullock,
Deputy Attorney General

- - -

29 June 1973

Subject: Motor Vehicles; Drunken Driving; Blood
Test to Determine Alcoholic Content;
Persons Authorized to Administer

Requested by: Dr. Arthur J. McBay
Chief Toxicologist, Office of the Chief
Medical Examiner

Question: Senate Bill 86 (Chapter 206, 1973 Session

Laws of North Carolina) in Section (a) and (c) refers to "a person authorized to administer a chemical test". With reference to a blood test, who is this person--the breathalyzer operator, the person qualified to withdraw blood, the person who analyzes the blood, or the person holding a valid permit issued by the State Board of Health pursuant to G.S. 20-139.1(b)?

Conclusion:

The person referred to in Section (a) and (c) of the 1973 rewrite of G.S. 20-16.2 (Senate Bill 86, Chapter 206, 1973 Session Laws of North Carolina) as authorized to administer a chemical test (breath) is a breathalyzer operator who holds a permit issued by the State Board of Health pursuant to the provisions of G.S. 20-139.1(b). The person authorized to administer a chemical test (blood) is a person who holds a permit issued by the State Board of Health pursuant to G.S. 20-139.1(b).

G.S. 20-139.1(b) reads as follows:

"(b) Chemical analyses of the person's breath or blood, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Board of Health and by an individual possessing a valid permit issued by the State Board of Health for this purpose. The State Board of Health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Board of Health; provided, that in no case shall the arresting officer or officers administer said test."

G.S. 20-139.1(c) in pertinent part reads:

"(c) When a person shall submit to a blood test at the request of a law-enforcement officer under the provisions of G.S. 20-16.2 only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic content therein" (Attorney General's opinion to Dr. Jacob Koomen dated 27 January 1970, 40 N.C.A.G. 429, stated "'other qualified person' under the provisions of G.S. 20-139.1(c) means a person qualified in fact, *i.e.*, those persons who by training and experience are qualified in the opinion of a medical doctor to withdraw blood for analysis from the human body, without injury, and who are acting under the supervision and control of such doctor.")

G.S. 20-16.2(a) in part reads:

". . . The person arrested shall forthwith be taken before a person authorized to administer a chemical test and this person shall inform the person arrested both verbally and in writing and shall furnish the person a signed document setting out:

- (1) That he has a right to refuse to take the test;
- (2) That refusal to take the test will result in revocation of his driving privilege for six months;
- (3) That he may have a physician, qualified technician, chemist, registered nurse or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of the law enforcement officer; and
- (4) That he has the right to call an attorney and select a witness to view for him the testing procedures; but that the test shall not be delayed for this purpose for a period in excess

of 30 minutes from the time he is notified of his rights."

G.S. 20-16.2(b) provides:

"(b) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this section and the test or tests may be administered, subject to the provisions of G.S. 20-139.1."

G.S. 20-16.2(c) provides:

"(c) The arresting officer, in the presence of the person authorized to administer a chemical test, shall request that the person arrested submit to a test described in subsection (a). If the person arrested willfully refuses to submit to the chemical test designated by the arresting officer, none shall be given. However, upon the receipt of a sworn report of the arresting officer and the person authorized to administer a chemical test that the person arrested, after being advised of his rights as set forth in subsection (a), willfully refused to submit to the test upon the request of the officer, the Department shall revoke the driving privilege of the person arrested for a period of six months."

Reading the related statutes set out above in *para materia* it is concluded that only those holding a permit from the State Board of Health under the provisions of G.S. 20-139.1(b) are authorized to administer chemical tests for the purpose of determining the alcoholic content of the blood of a person who has been arrested for an offense alleged to have been committed while operating a motor vehicle while under the influence of intoxicating liquor. Therefore, unless such person has refused to submit to a chemical test after being taken before a breathalyzer operator or medically qualified person holding a permit from the State Board of Health, there is no valid refusal. The fact that a person may be medically qualified to draw blood pursuant to G.S. 20-139.1(c) for the

purposes set forth in G.S. 20-16.2 does not bring such person within the meaning of "person authorized to administer chemical test".

It is the understanding of this Office that the reason only twenty-one permits have been issued by the State Board of Health authorizing persons to administer chemical test of blood is the possibility of time loss by medical personnel due to court appearance. Under the rewrite contained in Senate Bill 86 wherein the person authorized to give the test must give the warnings required under G.S. 20-16.2(a), it would be the better policy for an officer to carry all alcohol-related driving cases before a breathalyzer operator. There is a very definite possibility that the person though consenting to the test at the time will raise questions as to procedure when notified of suspension, and request a hearing as provided in G.S. 20-16.2(d). The prospect of such hearing provides a negative incentive for medical professionals to qualify themselves as persons authorized to administer blood tests.

Nothing herein is intended to imply that a blood test cannot be made where the person charged requests such after submitting to a test at the direction of a law enforcement officer nor that blood cannot be drawn by a qualified person as set out in G.S. 20-139.1(c) and submitted to a person holding a permit for analysis. However, if such procedure is followed, there can be no action taken for refusal to submit to the test as provided for under G.S. 20-16.2.

However, it is submitted that a §20-16.2 mandatory revocation should properly be imposed under the following set of facts: A suspected alcohol-related driving offender in a hospital emergency room confronts an authorized breathalyzer operator who, following the procedures outlined in G.S. 20-16.2, fails to obtain the consent of the driver for a chemical blood test. The procedural requirement of §20-16.2 having been met, refusal here should permit imposition of mandatory revocation notwithstanding that the breathalyzer operator was seeking consent for a blood test he himself could not administer. G.S. 20-16.2 merely requires that the advisal of rights and sworn statement of driver's refusal to submit to a chemical test be performed by a person authorized to administer a chemical test. An actual withdrawal of blood could still be carried out by one qualified to do so. Thence, the blood analysis could be made by a medical professional authorized to make such analysis under G.S. 20-139.1.

Robert Morgan, Attorney General
William W. Melvin,
Assistant Attorney General

- - -

29 June 1973

Subject: Drugs; Counseling and Treatment of Minors

Requested by: Bobby F. Jones
Counsel, Wilson-Greene Mental Health
Center

Questions: (1) Can employees of the Wilson-Greene
Mental Health Center, other than
physicians, counsel minors concerning drug
abuse without parental consent?

(2) Can physicians counsel minors
without parental consent?

(3) What is legally considered as
counseling and what is legally treatment?

Conclusions: (1) Yes.

(2) Yes.

(3) The difference between counseling
and treatment is a difference which is very
subjective and would have to be
determined on an individual basis.

The first question you pose is: "Can employees of the Wilson-Greene
Mental Health Center, other than physicians, counsel minors
concerning drug abuse without parental consent?"

This Office is aware of no law which requires employees of any
mental health center to obtain parental consent before counseling

minors concerning their problems with drug abuse. This would closely parallel a child receiving counseling from a minister, school counselor, lawyer, etc. While it appears that there is no law prohibiting these employees from counseling minors without parental consent, it should be pointed out that this does not mean that these employees are immune from liability in this regard. If, due to their counseling, they in some way harm the minor and the minor has a cause of action for this harm, the employee would not be immune from prosecution merely because of his position as an employee of the Wilson-Greene Mental Health Center. The chances of this happening are, of course, very remote but the fact that the employees are allowed to counsel without parental consent should not be construed to imply that they are immune from liability with regard to counseling.

The second question you pose is: "Can physicians counsel minors without parental consent?"

G.S. 90-21.1 states:

"It shall be lawful for any physician licensed to practice medicine in North Carolina to render treatment to any minor without first obtaining the consent and approval of either the father or mother of said child, or any person acting as guardian, or any person standing in *loco parentis* to said child where:

"(1) The parent or parents, the guardian, or a person standing in *loco parentis* to said child cannot be located or contacted with reasonable diligence during the time within which said minor needs to receive the treatment herein authorized, or

"(2) Where the identity of the child is unknown, or where the necessity for immediate treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the life of said minor, or

"(3) Where an effort to contact a parent, guardian, or person standing in *loco parentis* would result in a

delay that would seriously worsen the physical condition of said minor."

G.S. 90-21.2 states:

"The word 'treatment' as used in §90-21.1 is hereby defined to mean any medical procedure or treatment, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a physician licensed to practice medicine in the State of North Carolina that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where said physician administers treatment to said minor."

This statute, of course, refers to the treatment of minors and not the counseling of minors. The statute allows for treatment of minors in the three instances set out without parental approval, but, practically speaking, physicians will not treat minors without this approval due to the liability they might incur in doing so. This statute was enacted in order to allow physicians to treat minors without parental authority in these emergency conditions.

There is no statute which prohibits physicians from *counseling* minors without parental approval. In the case of counseling a minor rather than treating one, there are no statutes which prohibit this counseling by any individual or group of individuals. Of course, as in the case of the employees mentioned in your first question, physicians could be open to litigation involving their counseling if the individual receiving the counseling should sustain some sort of injury which would carry with it a viable cause of action.

The third question you pose is: "What is legally considered as counseling and what is legally treatment?"

Treatment is defined in G.S. 90-21.2, as set out above. This is not a definitive definition, however, in that treatment involves methods other than the performance of a physical act with relation to a

patient. That is to say, that a psychiatrist treats his patients but, in most cases, never physically touches them. To say what is counseling as opposed to treatment is to request the drawing of a line, which this Office does not believe can be drawn. The decision would have to be a subjective one, based on the individual patient, as to whether he was receiving counseling for his problem or whether he was receiving treatment for his problem.

It is the opinion of this Office that physicians can counsel individuals; however, the only person who can say with any certainty when the counseling stops and the treatment begins is the physician performing the services.

Robert Morgan, Attorney General
Henry E. Poole,
Associate Attorney

- - -

INDEX TO ATTORNEY
GENERAL OPINIONS

(Cumulative Since July 1, 1972)

(Pamphlets 1 and 2, Volume 42)

A

ADMINISTRATION OF ESTATES

Administrators; Person Under 21	
May Not Serve	162
Assets; Fees; Administrator; Joint	
Tenancy with Right of	
Survivorship; Joint Bank	
Accounts	316
Bond; G.S. 28-34	259
Commissions; Executor; Joint Tenancy	
with Right of Survivorship;	
Joint Bank Accounts	138

C

CLEAN WATER BOND ACT OF 1971

Application for Grants; Construction	
Begun Before Adoption of	
Administrative Rules and	
Regulations	16

COUNTIES

Commissioners; Compensation;	
Fixing Compensation of County	
Commissioners Pursuant to	
G.S. 153-13	132
Recreation Districts; Article 28,	
Chapter 153 (G.S. 153-368,	
<i>et seq.</i>)	74
Sand Dune Protection; Permits;	
Appeal Procedure	165

COURTS

Clerk of Superior Court; Assistant Clerk; Authority to Open Safety Deposit Box	163
Clerk of Superior Court; Partition of Real Property; Authority to Impose Restrictive Covenants in Deeds in Sale for Partition of Real Property; G.S. 46-30	1
District Courts; Juveniles; Criminal Offenses; Commitments to the Board of Youth Development When the Juvenile is Over 16 Years of Age	69
Judges; District Court; Constitutionality of Imposing Certain Fines	156
Juveniles; Probation; Education; Compulsory Attendance Law	133
Summons and Process; Nonresidents, Service of	110
Suspended Sentence; Conditions	303

CONSTITUTION

Public Officers and Employees; Dual Office Holding; Member of General Assembly Serving as Member of State Board of Agriculture	248
Public Officers and Employees; Dual Office Holding; Postmaster or Postal Employee Serving as Member of Local Board of Education	251

CRIMINAL LAW AND PROCEDURE

Arrest; Warrants; Oath Required; Necessity of Showing Probable Cause in Warrant Itself	265
Bail; Public Drunkenness; Holding	

a Public Drunk in Jail Until Sober; No Authority	182
Contributing to the Delinquency of a Child; Non-Professional Drug Treatment Facilities	170
District Court; Jurisdiction of; Maximum Penalty for Misdemeanor	173
Drug Conviction Record Expunction; G.S. 90-96 and 90-113.14	319
Extraditions; G.S. 15-80; Courts; Magistrates	267
Law Enforcement; Legality of Law Enforcement Officers From Out of Jurisdiction Serving as Undercover Agents in Another Jurisdiction	76
Search and Seizure; Admissibility of Evidence Obtained Without Search Warrant on Basis of Consent; "Plain View" Doctrine or Search Incident to Arrest	321
Sentences; Judgment and Commitment; Correction, Department of; Prisons and Prisoners	68
Sentencing; Presentence Report; Use of Prior Convictions; Probation and Probation Officers	92
Youthful Offender; Parole on Conditional Release	83

D

DOGS

G.S. 67-13 and 67-30; Disposition of Dog Tax Funds in Rockingham County	277
---	-----

DRUGS

Confidentiality of Drug Abuse Patient Treatment and
--

Rehabilitation Records	298
Counseling and Treatment of Minors	331

E

EDUCATION

Colleges and Universities; Annuity or Retirement Income Contracts for Faculty Members, Officers and Employees of State-Supported Institutions of Higher Learning, G.S. 116-46.2	6
Colleges and Universities; Board of Governors; Constituent Institution; Eligibility for Membership on Board of Governors	239
Colleges and Universities; Fair Labor Standards Act; Joint Employment of Employees Between Different Agencies of the University; Aggregation of Hours Worked by Joint Employees	279
Colleges and Universities; Western Carolina University; Authority of Western Carolina University to Lease a Residence Hall to Southwestern Technical Institute for the Academic Year 1973-1974 in Order to House the Students of Southwestern Technical Institute	244
Public Schools; Constitutional Mandate as to the Length of Operations of Public Schools; Article IX, Section 2, of the Constitution of North Carolina; Statutory Definition of School Day, School Month and School Term; Authority of the General Assembly to Authorize the State Board of Education	

to Suspend the Operation of a Public School or to Grant Recess Periods	252
Teachers; Teacher Tenure Act; G.S. 115-142; Career Teachers	150, 61
Use of Tax Funds for the Support of Athletic Programs	193
Wire Interception and Interception of Oral Communications; Legality of Superintendent of Schools Taping Conversation With Employee Without Informing Employee That the Conversation is Being Taped	275

ELECTIONS

Registration; Commissioners; Time of Appointment	79
---	----

ESCHEATS

Hospitals; Applicability of Escheats Law to Hospital	14
Marketing Cooperatives; Applicability of G.S. 116A-7	12
Statutes of Limitations Inapplicable	49

EXECUTIONS

Sheriffs; Service of Writ of Possession for Personal Property; G.S. 1-314(4)	312
--	-----

G

GENERAL ASSEMBLY

Annual Sessions; Annual Budgets; Constitutional Provisions	160
Sessions; Board of Transportation, Report	320

H

HEALTH

Certificate of Need; Inapplicability to Facility Already Constructed but Not Fully Licensed or Used	54
Certificate of Need; Proper Licensing Agency for Facility Which Combines Hospitals, Nursing Homes and Rest Home Care	57

HOSPITALS

Administration of Estates; Lien of State Hospitals on Estate of Patient; G.S. 143-126; Priority of Funeral Expenses; G.S. 28-105	262
Administration of Estates; Lien of State Hospitals on Estate of Patient; G.S. 143-126; Widow's and Child's Allowances; G.S. 30-15; G.S. 30-17	263

I

INFANTS AND INCOMPETENTS

Child-Caring Facilities; Permits and Licenses; Operation of a Home for Teen-Aged Girls	226
Child Day-Care Facilities; Child-Staff Ratio; G.S. 110-91	301
Child Day-Care Facilities; Size of Groups; Child-Staff Ratio; G.S. 110-91	221
Juvenile Training Schools; Applicability of State Statutes; Use of Cigarettes by Minors; Responsibilities of Training School Staff	203
Minors; Hazardous Occupations Prohibited; G.S. 110-7	220
Sterilization of Minors; Jurisdiction of State Courts Over Federal Reservation	212

INSURANCE

Automobile Liability Insurance	
Policies; Termination by	
Rescission; Legality of	29
Automobile Liability Insurance	
Policies; Terminations by	
Cancellation and Refusal to	
Renew; Applicability of	
48-Month Exclusion	22

INTOXICATING LIQUORS

Beer; Sunday Sales; County	
Regulation of; Straw Vote	26
Beer and Wine; Sale of Sweet	
Wine in City of Monroe; Chapter	
541, Session Laws of 1963;	
Enactment of Chapter 18A of	
the General Statutes	4
Solicitation of Sales; Authority	
of State Board to Regulate	
Solicitation of Sales of	
Alcoholic Beverages, Beer	
and Wine	51
Transportation; Alcoholic Beverages	
Being Transported to ABC	
Stores; Authority of Local	
Board to Transport Beverages	114

J

JAILS

Sheriffs; Duty of Sheriff to	
Transfer Prisoners to	
Adjoining County	127

JURIES-JURORS

Juries-Jurors; G.S. 9-5	149
Jury; Removal of Names from	
Jury List After List is	
Prepared	260

L

LICENSES AND LICENSING

Day Care Facilities; Facility With Morning Kindergarten and a Lesser Number of Children for All Day Care	81
Day Care; Facilities on Federal Reservations	128
Day Care Facilities; Number of Children for Whom Facility Licensed	55
General Contractors; Installation of Industrial Equipment	45
Plumbing and Heating Contractors; Necessity of Obtaining a License Under the Grandfather Clause Prior to Engaging in the Business of Plumbing and Heating Contracting	20
Real Estate Licensing Board; Educational Requirement for Broker's Examination; G.S. 93A-4(a)	288

M

MENTAL HEALTH

Alcoholism; Federal Grants; Disclosure of Information; Reports	206
Commitment to Local Mental Institutions	168
Confidentiality of Hospital Records; Release of Medical Records to a Former Patient	291
Courts; Sheriffs; Judicial Commitment; Transportation of Mentally Ill Persons or Inebriates; Authority of Clerk to Issue Order for Out-of-County Transportation	190

Detention of Inebriates and Mentally Ill Persons; Authority of Clerk of Superior Court to Issue Custody Order to Sheriff	43
Detention of Inebriates and Mentally Ill Persons; Authority of Clerk to Order Non-State Operated Hospitals to Involuntarily Accept Patients	66
Examination and Hospitalization of Inebriates; Public Drunkenness as a Criminal Offense	41
Health and Accident Insurance Policies; Issuance and Delivery; Continuation of Coverage for Mentally Retarded or Physically Handicapped Children	268
Infants and Incompetents; Voluntary Admission of Minors to State Hospitals Upon Parents' Request; Involuntary Return of Residents to Centers for Mentally Retarded	216
Mentally Ill or Inebriate Persons; Judicial and Emergency Commitment; Authority of Sheriff to Carry Out Orders of Clerk	175
Public Drunkenness; Juvenile Delinquency; Commitment to State Hospital; Commitments Pursuant to G.S. 122-83, G.S. 122-84 and G.S. 122-91	240

MOTOR VEHICLES

Abandoned or Junked Vehicles; Removal of Abandoned Vehicles from Private Property	47
Drivers' Licenses; Habitual Offenders	130
Drivers' Licenses; Limited Driving Privilege; Driving After License Revoked; Sufficiency of Warrant	97
Drivers' Licenses; Limited Driving	

Privilege; Revocation; Driving Under the Influence, Second Offense	125
Drivers' Licenses; Reduction of Points for Successful Completion of Driver Improvement Clinic; G.S. 20-16(c)	84
Drunken Driving; Blood Test to Determine Alcoholic Content; Persons Authorized to Administer	326
Drunken Driving; Plea Bargaining; Careless and Reckless Driving	71
Drunken Driving; "Public Vehicular Area"	107
Intoxicating Liquor; Second Offense Under G.S. 20-138	208
Transfer of Title; Affidavit of Heirs (DMV Form 317)	209

MUNICIPALITIES

Day-Care Centers; No Authority to Expend Municipal Funds	135
Intoxicating Liquors; Authority to Regulate Consumption and Display on Public or City-Owned Property	59
Ocean; Regulating Activities in the Atlantic Ocean by	158
Ordinances; Parking Meters; City of Raleigh	141
Sanitary Districts; G.S. 30-128	315
Streets and Highways; Powell Bill Funds; Adjustments of Allocation	183
Streets and Highways; Powell Bill Funds; Expenditure for Sidewalks	91
Streets and Highways; Powell Bill Funds; Expenditure on State Highway System Streets	85

O

OATHS

Attorneys at Law; Who May Swear in Attorneys to Practice Law; G.S. 84-1, G.S. 11-7.1	82
--	----

P

PROBATION

Conditions of; Self-Improvement Centers	184
--	-----

PUBLIC CONTRACTS

Bidding; Buildings, Vocational Training Classes	159
Bidding; Factory-Installed Electrical Heating and Plumbing Facilities; Separate Bids Required; G.S. 143-128	129
Municipalities; Number of Bids Required for the Purchase of Apparatus, Supplies, Materials or Equipment	247
Nonprofit Corporation; Federal Grants; Purchase of Communication Equipment; Local Governments	273

PUBLIC OFFICERS AND EMPLOYEES

ABC Board Employees; Not Employees of the Municipality or County	28
Conflict of Interest; County Board of Education; Purchase from Company of Which Member is Partner; Applicability of G.S. 14-236 and 14-237	180
Conflict of Interest; Officer Contracting for His Own Benefit; G.S. 159A-10;	

G.S. 14-234; County Commissioner Who is Officer of Corporation	9
Courts; Clerk of Superior Court; Filling Vacancy; Appointment of Acting Clerk; G.S. 7A-100	325
Double Office Holding; Member of County Social Services Board and County School Board	116
Highway Patrol; Liability of Troopers for Medical Services Rendered to Patients	2
Private Use by Physicians of State Facilities	58
Register of Deeds; Cancellation of Deeds of Trust; G.S. 45-37	308
Register of Deeds; Indexing and Cross-Indexing of Deeds of Trust	166
Workmen's Compensation; State Highway Patrol	136

PUBLIC RECORDS

Inspection of the Records of a County or City Board of Education; Records Subject to Inspection; Persons Who Have the Right to Examine and Inspect the Records of a County or City Board of Education; Copies of Records of a County or City Board of Education, Including Certified Copies; Fees to be Charged for Furnishing Certified Copies of These Records	229
---	-----

R

REDEVELOPMENT COMMISSIONS

Conflict of Interest; Member of Commission Leasing Part of Building From Redeveloper	197
--	-----

S

SOCIAL SERVICES

Adoption of Minors; Definition of "Stepchild" in G.S. 48-2(5); Applicability of Presumption of Death	201
Adoptions; Necessity of Termination of Parental Rights to Dispense with Finding of Abandonment by the Clerk; Termination of Parental Rights Ordered Before or After Filing of Petition for Adoption	305
Aid to the Aged and Disabled Liens; G.S. 108-29; Chapter 204, Session Laws of 1973; Repeal of Lien; Realty Acquired After Effective Date of Repealing Act	270
Aid to the Aged and Disabled Liens; Repeal of Lien Laws; Chapter 204 of the Session Laws of 1973; G.S. 108-29; Controlling Date as to Liens	271
Counties; Optional Participation in General Assistance Program; Authority of Social Services Commission to Promulgate Rules for General Assistance Program	309
Education; Contracts; Employee Liability Under Education and Leave Grant Program	222
Executive Organization Act of 1973; Authority of Secretary of Human Resources to Assign Authority to Rule on Public Assistance Appeals	313
Foster Home Fund; Noneligibility of Persons Who are 18 or More Years of Age	8
Housing; Authority of County Department of Social Services to Contract With	

HUD for Rental Assistance	
Experiment	293
Juveniles; Medical Care; Sufficiency of	
Consent by County Department of	
Social Services	101
Juveniles; Probation; Termination Under	
Interstate Compact on Juveniles	117
Juveniles; Wards of the State;	
Effect of Placement of Custody	
by Judge of Juvenile Court	88
Transportation; Volunteers; Contracts;	
Tort Liability	215

STATE DEPARTMENTS, INSTITUTIONS AND AGENCIES

Art Museum; Building Commission;	
Selection of Site for State	
Art Museum	148
Correction, Department of; Liability	
for Hospitalization of Inmates	38
Correction, Department of; Records	
Section; Confidentiality of	
Records	186
Eminent Domain; Relocation Assistance	104
Highway Commission; Outdoor Advertising	
Control Act	281
Orthopedic Hospital; Authority to	
Make Charges for Treatment, Care	
and Maintenance	111
Publications; Free Distribution on	
Request to Statutory List of	
Institutions; G.S. 147-50	94, 145
Real Property; Sale; Department of	
Administration; Counties	189
State Board of Education; Filling	
of Vacancies; Authority of the	
Governor to "Redesignate" a	
Member of the State Board from	
an At Large Membership to Membership	
From an Educational District;	
Article IX, § 4(1) of the	
Constitution of North Carolina	177

Tort Liability; Mental Health; Area Mental Health Boards; Board Members; Authority to Sue and be Sued	120
UNC at Chapel Hill; Public Utilities; Governor's Commission to Study Sale or Retention of University-Owned Utilities; Chapter 723, Session Laws of 1971	122
Water and Air Resources; Reclassification of Streams by Board; Notice and Procedure Required Under G.S. 143-214.1	256

T

TAXATION

Ad Valorem; Exemptions; Real Property; Homes for the Aged, Sick and Infirm; G.S. 105-278(5)	99
Ad Valorem; Reduced Valuation of Property of the Elderly; Executors; G.S. 105-277.1	198
Collection of City Taxes; Municipal Policemen; Service of Notice of Attachment and Garnishment; G.S. 105-368(b); Powers and Duties of Policemen; G.S. 160A-285	296
Corporation Franchise Tax; Deduction; Real Estate Investment Trust; Evidences of Debt; G.S. 105-125	236
Gift Tax; Decedent's Estate; Assets Includable; G.S. 105-108; G.S. 105-109	32
Intangibles; Annuity Contracts; G.S. 105-202	199
Privilege Licenses; Faith Healers; G.S. 105-41; Exemptions	286
Privilege License Tax; Selling	

Illuminating Oil or Greases or Benzine, Naphtha, Gasoline or Like Products; Automotive Service Stations; G.S. 105-72 and G.S. 105-89	18
Sales Tax; Laundries and Dry Cleaners; Rug Cleaning Services; G.S. 105-164.4(4)	35

